TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 153

FRANK R. COPPOLA, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 17, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 153

FRANK R. COPPOLA, PETITIONER,

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[fol. A]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

November 1956 Term

No. 7001-C

Vio. Sec. 2113(a), T. 18, U. S. C.
and Sec. 2113(b), T. 18, U. S. C.

THE UNITED STATES OF AMERICA,

—vs.—

FRANK R. COPPOLA and
DARIO D'ANTUONO, a/k/a "DANNY" D'ANTUONO.

INDICTMENT—Filed February 4, 1957

The Grand Jury charges:

That on or about February 15, 1956, in the City of Buffalo, State and Western District of New York, the defendants, Frank R. Coppola and Dario D'Antuono, a/k/a "Danny" D'Antuono, by force, violence and intimidation, took from the presence of employees of the Manufacturers and Traders Trust Co., Clinton-Bailey Branch, approximately $52,529.00 of United States currency, which money was in the care, custody, control, management and possession of Manuafacturers and Traders Trust Co., a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation; in violation of Section 2113(a), Title 18, United States Code.

Count II

The Grand Jury further charges:

That on or about February 15, 1956, in the City of Buffalo, State and Western District of New York, the defendants, Frank R. Coppola, and Dario D'Antuono, a/k/a

"Danny" D'Antuono, entered the Clinton-Bailey Branch of the Manufacturers and Traders Trust Co., a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation, with intent to commit in said bank the crime of larceny; in violation of Section 2113(a), Title 18, United States Code.

[fol. B] Count III

The Grand Jury further charges:

That on or about February 15, 1956, in the City of Buffalo, State and Western District of New York, the defendants, Frank R. Coppola and Dario D'Antuono, a/k/a "Danny" D'Antuono, did take and carry away, with intent to steal, approximately $52,529.00 of United States currency, which money was in the care, custody, control, management and possession of Manufacturers and Traders Trust Co., a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation; in violation of Section 2113(b), Title 18, United States Code.

John O. Henderson, United States Attorney.

A True Bill:

(Signature illegible), Foreman.

[fol. 1]

IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—vs.—

FRANK R. COPPOLA.

Transcript of Trial—July 1, 1957

APPEARANCES:

John O. Henderson, United States Attorney, Leo Fallon, Asst. United States Attorney, Attorneys for the United States of America, Federal Bldg., Buffalo, N. Y.

William Mahoney, Attorney for the Defendant.

The trial of the above matter was held, commencing on the 1st day of July, 1957, at the United States District Court, Western District of New York, at its Courtroom at Buffalo, New York, before Hon. Stephen W. Brennan, United States District Judge, where the following proceedings were had.

[fol. 2] A Jury was duly empanelled and sworn.

July 2, 1957

(Parties appear as before.)

The Court: All right, gentlemen, I guess you may proceed.

* * * * * * *

[fol. 23] ALBERT J. EGER called as a witness for the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fallon:

. . . . . .

[fol. 24] Q. Now what is your capacity with the Manufacturers' and Traders' Trust Company?

A. I am a Branch Bank Manager at the Clinton-Bailey Office.

Q. How long have you been Manager of that Branch?

A. Approximately three years.

Q. You were, therefore, the Manager on February 15, 1956, is that correct?

A. Yes, sir.

. . . . . .

[fol. 41] Q. Mr. Eger, were you on duty February 15, 1956?

A. Yes, sir.

Q. Could you tell the Court and the Jury in your own words what occurred that day, you tell us what you were doing at the time you first noticed anything unusual happen?

A. Well, I was seated at my desk and I was answering a telephone call. It was about 2:10 P. M., and there was a girl came through the gateway towards my desk and was standing there with some papers.

Q. That is the gateway which you described on the diagrams.

A. Yes, the entrance to the Manager's area there.

Q. All right.

A. And I was just about through talking to this party and I had hung up the receiver and I still had my hand on the receiver when I noticed two men come in with drawn [fol. 42] guns.

. . . . . .

The Witness: And I noticed that they wore stockings over their heads and they repeated, "This is a stickup" and

one of the holdup men had his gun in the direction of me at my desk there, and I kind of looked and I waved that way (indicating), I said, "Quit your kidding". So I went on with my work. I wanted to sign some papers for this girl, and the next thing I knew this fellow came through the gateway and approached me and very close to me he [fol. 43] held the gun in the direction of my chest and he ordered me to get up, and he said, "I'm not kidding, this is a stickup." He says, "Stand up and put your hands up." So I did, and I looked around and I noticed everybody else had their hands up by that time.

* * * * * * *

[fol. 44] Q. I see. Then what happened?

* * * * * * *

[fol. 46] A. So after that the man that was back here at the cages, he went back here again and went through the same procedure. He went through here, this little gateway past our desks, had his gun in front of him all the time pointing at us. He went through this gateway, then he started proceeding—he went in Miss Sullivan's cage and [fol. 47] tried the drawer, found it was locked, so then he went to Miss Nehring's cash drawer and opened that and was taking the currency or money out of there and putting it in a bag, and he went to Miss Smith's, took money out of that cage and put it in the bag. Then he proceeded on to the work cage and found nothing in the drawers there so he come back in again and then he started proceeding out and went through the same way as he come in, still having the gun all the time, and he had a pillowcase which was bulging and he went through here and then, of course, they made their departure.

* * * * * * *

[fol. 52] Cross examination.

* * * * * * *

[fol. 73] By Mr. Mahoney:

* * * * * * *

Q. Don't you recall, Mr. Egee, of an occasion where two members of the F. B. I. brought Frank Coppola to the Bank, approximately two weeks after February 15, 1956?

A. I didn't know it was that early after. Surely I remember it, I was there.

• • • • • • •

[fol. 76] Q. And you also informed your personnel that it was for the purpose of re-enacting what occurred on February 15, 1956, inasmuch as the F. B. I. was bringing out Mr. Coppola; right?

A. Yes, sir.

• • • • • • •

[fol. 77] Q. Well, did you get any instructions from them at that time as to what you were to do in regards to re-enacting this particular crime?

A. That's right.

Q. Where did you get it from? You got it from the F. B. I. men, didn't you?

A. They told us.

Q. That is what I asked you.

The Court: Not so fast.

[fol. 78] The Witness: They told us that we were to look over this man as we bring him in, and now I don't recall about the stocking. I know he had a stocking over, but whether he was brought in that way or put it on in the Bank I don't recall that, but he did have it on when we went through the re-enactment of the same day.

• • • • • • •

[fol. 236a]

IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

[Title omitted]

Transcript of Trial—July 8, 1957

* * * * * * * *

[fol. 237] (Parties appear as before.)

(Whereupon, at 10:50, July 8, 1957, the following proceedings were had:)

* * * * * * * *

[fol. 240] WILLIAM BUYERS called as a witness for the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fallon:

* * * * * * * *

[fol. 241] Q. What is your occupation?

A. I am a deputy sheriff of Erie County, New York.

Q. How long have you been engaged in that work?

A. Approximately three and one half years.

* * * * * * * *

[fol. 242] Q. Do you know the defendant, Frank Coppola?

A. Yes, sir, I do.

Q. Do you see him here in the court room?

A. Yes, sir.

Q. Will you point him out?

A. Yes, sir, that is him right there (indicating).

Q. Is he any relation of yours?

A. He is my wife's cousin.

Q. Now, Bill, did there come a time when you had a conversation with him with regard to the M. & T. bank robbery?

A. Yes, sir, there did.

Q. When was that?

A. That was on November 5 of 1956.

Q. Whereabouts?

A. At Frank Coppola's apartment.

Q. Who was present?

A. There was Frank Coppola, Phyllis Coppola, my wife and myself.

Q. You tell us in your own words what conversation you [fol. 243] had at that time keeping it as much as possible to the M. & T. bank robbery—any conversation with regard to it.

A. Yes, sir. Frank had just come back from Florida, he had told us, and he also told us he had been to—he called me into the T. V. room, which was a small, formerly dining room and it was off the kitchen; he closed the door, and Frank and I were in the T. V. room alone. He told me he had been spending approximately two hundred dollars a day down in Havana—he said he went to Florida and Havana—and I said, "Gee, that is a bundle of money, Frank," and he says, "Well, you could go down there and live and you could make a bundle of money," that all I would have to do would be to finger bank jobs on robberies for him and I would get ten percent of any money he made and I would still be in the clear. He went on then to say that, "Do you know how the F. B. I. has been bothering me; they think I pulled the M. & T. bank job at Clinton Avenue." He said, "Well, I did, and I will tell you, my partner and I"—and he didn't identify his partner—he said, "My partner and I pulled the M. & T. bank job; we got almost $52,000"—or around $50,000, he said. He told me that he and his partner, as they were going in the bank, his partner was so nervous that he had to reach up and pull the mask down for him; that once they got in the bank his [fol. 244] partner didn't carry out any of his assignments properly; that Frank had to get all the money himself, scoop up all the money himself; he had to go out in the hall once with his partner and drag in two passers-by. He told me as he went in the bank the manager was reaching for the phone or on the phone and Frank went over with a loaded gun and he pointed it to his head and he said, "You son of a bitch I will kill you." With that, the bank manager put the phone down and said, "You aren't kidding, are you?" While Frank was telling me this he turned

around—he left the room and he came back with a small twenty-five automatic Bernadelli. He had it in his shirt pocket and he said, "This is one of my guns I carry." He said, "It is small enough I can hide it behind a pack of cigarettes or put it in the crotch of my trousers."

* * * * * * *

[fol. 249] Q. Did there come another occasion or time when this robbery was discussed?

A. Yes, sir.

Q. And approximately when was that?

[fol. 250] A. That would be November 13th of 1956.

Q. Now, how did this meeting come about and who was present?

A. Frank Coppola had arranged to meet me at my home on November 13th. I took my wife to a baby shower and I told him I would meet him afterwards. As he pulled up in front of my home I saw Frank Coppola was standing on the corner and another man I had been introduced to the previous day was in the car, and I had been introduced to him as Danny, his partner from the M. & T. bank job, and Danny was driving his brother's 1954 Olds, I believe—yes, it was a 1954 Olds.

Q. Do you remember whether the man introduced to you on that occasion was Dario D'Antuono?

A. Yes, sir, that is correct; he has been identified as Dario D'Antuono.

Q. Have you seen that man since?

A. Yes, sir, I did.

Q. Go on, tell us what happened on that occasion. You said that Coppola, D'Antuono and yourself were present. Is that all that were there?

A. Yes, sir, that is correct. Three of us were in this car that Danny told me was his brother's. We were driving downtown and as we passed the main M. & T. bank—it is on Main Street—Frank pointed to that bank and he said, "That is where the cashier works I went out with." [fol. 251] And then we went over to Swan, in the vicinity of Swan and Seneca and Enslie, and we were there about an hour and a half or two hours on other business, and during the course of this trip through the Swan, Seneca-

Enslie neighborhood, Frank began talking about the M. & T. again. And he and Danny both discussed the matter.

Q. "Danny"—again you are referring to Dario D'Antuono, is that right?

A. Yes, sir.

Q. You said they began talking.

A. I asked Frank if when he robbed this bank at Seneca and Enslie if Frank wouldn't be scared.

. . . . . .

[fol. 254] Q. When is the next conversation you had with [fol. 255] Frank Coppola in regard to the M. & T. bank robbery, do you recall?

A. I don't recall the date of it, no.

Q. Do you have your notes?

A. (Witness examines papers.)

Q. Would that refresh your recollection if you refer to the notes which you made with regard to these conversations?

A. Yes, sir.

Mr. Fallon: I would like to have this marked as an exhibit, please.

(Whereupon a paper was marked Government's Exhibit 22 for identification.)

Q. I show you Government's Exhibit 22 marked for identification and ask you if that refreshes your recollection as to when a conversation was had with the defendant, Frank Coppola in regard to the robbery of the M. & T. bank?

A. Yes, sir.

Q. And when was that conversation had?

A. He told me that—

Q. When was the conversation had?

A. Oh, I am sorry. November 26, 1956.

Q. And what was said at that time? Who was present, first of all?

A. There was Frank, his wife, Phyllis Coppola, and myself.

Q. Whereabouts did this conversation take place?

[fol. 256] A. It was up in his apartment on South Avenue in Niagara Falls.

Q. In the defendant's apartment?

A. Yes, sir.

Q. How did the meeting of these people come about?

A. I don't recall now whether he had called me or I had gone up on my own.

Q. Go ahead and tell us what was said at that time with regard to the M. & T. bank robbery.

A. Frank told me as a result of the M. & T. holdup there was a lot of pressure on him; the police investigators, and so on, were questioning him so much—well, he said they were questioning him an awful lot about the M. & T. bank so he planned—he told me he planned the Liberty Bank and two others—have two others—

. . . . . .

[fol. 257] A. (Continuing) Frank told me that because of this pressure on him from the M. & T. bank he planned the Liberty Bank and he planned it so that his partner from the M. & T. and another man would rob the Liberty and it would take the pressure off him because the other man would have the same general build as he had. That is what he wanted, to get as much pressure off him from the M. & T. as possible.

. . . . . .

Q. Did there come another occasion when you had a conversation with Frank Coppola about the robbery of the M. & T. bank?

A. Yes, sir.

[fol. 258] Q. When was that?

A. The next one I recall is December 3rd.

. . . . . .

[fol. 261] Q. Was there another occasion when you had any conversation with regard to the M. & T. bank robbery?

A. Yes, I did. I don't recall the date, though.

Q. Would it refresh your recollection to examine your notes?

A. Yes, sir.

Mr. Fallon: Mark this, please.

(Whereupon a paper was marked Government's Exhibit 23 for identification.)

Q. Does this refresh your recollection as to when this conversation was had?

A. Yes, sir.

Q. When was it?

A. December 18, 1956.

. . . . . .

[fol. 263] Q. Was there another occasion when the robbery of the M. & T. bank was discussed?

A. Yes, sir, on January 5, of 1957.

Q. Where did that conversation take place?

A. In Frank's apartment on South Avenue.

Q. And who was present?

A. There was Frank, his wife Phyllis, and myself.

Q. What was said on that occasion in regard to the M. & T. bank robbery?

A. Well, Frank had quite a bit of money in front of him, a lot of singles, on the kitchen table and he was counting and sorting it, and when I made the remark that that was a lot of money he said, "Did you ever see a bathtub full of money?" He said, "Well, Danny and I counted a whole bathtub full of money after the M. & T. bank job."

. . . . . .

[fol. 268] Q. Were you making regular reports of these matters to the F. B. I.?

A. Yes, sir, I was.

Q. From the time of the first conversation you had with Frank Coppola with regard to the M. & T. robbery?

A. Yes, sir.

Q. You stated you made contacts with the F. B. I., is that correct?

A. Yes, sir.

Q. Did you make reports to the F. B. I. at regular intervals?

A. Yes, sir, I did.

Q. Written and oral, both, or just written or what?

A. Both written and oral.

Q. Were you given any instructions by the F. B. I. in regard to these matters?

A. Yes, sir, I was.

[fol. 269] Q. Did you follow those instructions to the best of your ability?

A. Yes, sir.

* * * * * * *

[fol. 398] ROBERT GORDON EDDY called as a witness for the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fallon:

Q. Gordon, where do you live?

A. Buffalo, New York.

[fol. 399] Q. How long have you lived here?

A. The last ten years.

Q. What is your occupation?

A. Special agent of the Federal Bureau of Investigation.

Q. How long have you been engaged in that work?

A. Approximately sixteen years.

Q. Did there come a time on or about January 10, 1957 when you had occasion to interview the defendant, Frank Coppola?

A. Yes, sir.

Q. And where was that?

A. That was at the Buffalo Police Department cell block.

Q. Who else was present?

A. Special Agent Omar Jenson of our office.

Q. Would you tell this court and jury what you said to the defendant and what the defendant said to you on that occasion?

Mr. Mahoney: If your Honor please, I object to this and raise the question immediately that whatever interrogation took place was while the defendant was in custody, and we claim that any statement that was made was involuntary in character, and under the Carignan case we respectfully request the opportunity for the development of this particular factor without the presence of the jury.

[fol. 400] JURY EXCUSED

The Court: The jury will stand aside.

(Whereupon the jury left the court room and the following proceedings had in the absence of the jury:)

Mr. Fallon: I assume Mr. Mahoney desires to ask some preliminary questions.

The Court: All right.

Cross examination.

By Mr. Mahoney:

Q. Mr. Eddy, on January 10, 1957 you just testified here that you had a conversation with the defendant at police headquarters in the City of Buffalo, New York.

A. That is correct.

Q. And at that time you were accompanied by Omar Jenson?

A. That is correct.

Q. He is a member of the F. B. I.?

A. That is correct.

Q. And at that particular time you knew that he was in custody, did you?

A. Yes, sir.

Q. On January 10 of 1957 was John Roche, the head of the F. B. I. in Buffalo, New York?

A. Yes, sir.

Q. And he was your immediate superior, was he?

A. That's correct.

Q. And did you know that on January 9th, the day pre-[fol. 401] ceding the 10th, that Mr. Roche, the agent in charge, had contacted the Buffalo police?

A. I knew that he had contact with the Buffalo Police Department, yes, sir.

Q. Did you know that occurred on January 9th, 1957, the day preceding?

A. Correct.

Q. Did you know as a result of the call that the defendant, Frank Coppola was taken in custody on the day following the call?

A. That doesn't exactly explain what happened, sir.

Q. I am asking you if you know that the defendant, Frank Coppola, was taken in custody on January 10th, 1957?

The Court: That wasn't your question. You said as a result of the call.

Mr. Mahoney: Strike it out.

Q. Did you know on January 10, 1957 that Frank Coppola was taken into custody?

A. Yes, sir.

Q. And he was taken into custody by the Buffalo Police Department?

A. That is correct, sir.

Q. And approximately what time of day did you learn of the fact that Mr. Coppola was in custody?

A. I couldn't tell you exactly, but I would say sometime [fol. 402] around noon.

Q. By noon, that is twelve o'clock?

A. Twelve o'clock.

Q. That is your best recollection? And how long after you learned of the fact that he was in custody at twelve o'clock noon did you and Agent Jenson go to the police headquarters in the City of Buffalo, New York?

A. We went to police headquarters at approximately eight P.M.

Q. In the evening?

A. That is correct.

Q. Had you been to police headquarters prior to that time?

A. No, sir.

Q. Do you know whether or not any other agents connected with the Buffalo office had been there?

A. To my knowledge, no agent of the Buffalo office had been there. To my knowledge, no agent had been there.

Q. To your knowledge—you don't know? At the time you went over was anybody other than Omar Jenson present?

A. When we went there at eight o'clock the Buffalo police department was holding a line-up.

Q. And did anybody accompany you to police headquarters other than Omar Jenson?

A. No, sir.

Q. And subsequent to that hour of eight o'clock and up [fol. 403] to midnight, and also from midnight of the 10th of January, 1957 into the early hours of the morning of January 11, 1957, did you see other agents connected with the F. B. I. office of Buffalo, New York, at police headquarters?

A. Yes, sir.

Q. And would I be correct in saying that there were seven or more agents from the office other than Mr. Jenson and yourself?

A. No, sir.

Q. By that you mean I would be incorrect?

A. To my knowledge you would be incorrect.

Q. And approximately what is your judgment as to the number of agents that were at police headquarters?

A. Mr. Roche sent two of us to interview Mr. Dario D'Antuono.

Q. How many other agents did you see at police headquarters?

A. There was myself, five other agents, and Mr. Roche.

Q. Mr. Roche, Mr. Eddy, and five others?

A. No, there would be four others—well, there would be five others other than myself, that is correct.

Q. I want to get this correct. There was Mr. Roche and Mr. Eddy and then four others?

A. No, that would be incorrect; there would be five others.

Q. Now, let me have the names of the five others.

A. Well, I can't recall specifically the identities of all of them. The only ones I do recall at this time are Frank [fol. 404] Jenkins and Frank Liddy.

Q. And haven't you any recollection as to the identity of the other agents, that is, the three others that were there?

A. No. Mr. Roche gave us specific assignments and we left on our assignment and I didn't pay any attention to who the agents were or what they were doing.

Q. But you saw them?

A. Yes, sir.

Q. Now, when you went over there at eight o'clock you say that there was a show-up in progress?

A. That's correct.

Q. And during that particular show-up, were you in that room?

A. Yes, sir.

Q. Was Mr. Jensen—by the way, did I get that correctly, J-e-n-s-e-n?

A. S-o-n.

Q. So that there were five others in addition to Jenkins and Liddy, and a Mr. Jenson had been there?

A. That's correct.

Q. And you were in the room while a show-up was taking place?

A. I was in the room part of the time when the show-up took place.

[fol. 405] Q. Now, after the completion of the show-up did you go to some other part of that particular building with the defendant, Coppola?

A. Not with the defendant. We went to the Buffalo police department cell block to arrange to interview the defendant.

Q. That cell block is on the fourth floor of police headquarters, is that correct?

A. That is correct.

Q. Would you approximate how long after your arrival there at 8:00 P.M. would you say that you went to the cell block to make arrangements to interview him?

A. At approximately 9:00 P.M.

Q. Would you say that that was the hour that Mr. Coppola was brought back to the cell block at police headquarters?

A. I would say that was approximately it, yes, sir.

Q. Is that the time you and Mr.—was it Mr. Jenson that was with you?

A. That's right.

Q. Was that the time you and Mr. Jenson went to the cell block at police headquarters?

A. That's correct.

Q. And were you in the cell block for some time?

A. We were in the cell block—you mean before we interviewed Coppola or—

[fol. 406] Q. Let me have it both ways, if you will. How long were you in the cell block before you interviewed him?

A. We were in the cell block approximately five or six minutes, I would say, before they brought Mr. Coppola out, and then we finished our interview somewhere shortly after 12:45 on the morning of the 11th.

Q. You finished shortly after 12:45 A.M. on the 11th?

A. That is correct.

Q. And did you have him in your custody between the hours of five or six minutes after nine up until shortly after twelve forty-five A.M. on the morning of January 11, 1957?

A. No, sir, he wasn't in our custody.

Q. Well, was he with you?

A. He was in the interview room with us, yes, sir.

Q. The interview room over there is barricaded, is it not?

A. We were in the office, not in the usual interview room because—

Q. The office is barricaded, is it not?

A. It's behind bars, yes.

Q. And did your interview of this defendant consume from five to six minutes after nine until shortly after 12:45 A.M. on the following morning?

A. That is correct.

Q. During that particular time did you see the other [fol. 407] agents in the cell block of police headquarters other than Mr. Jenson?

A. I saw—yes, I saw the other agents.

Q. And you know that they had interview rooms over there, did you not?

A. Yes.

Q. Did you see those other agents in the interview rooms?

A. No, sir, I did not go in the interview rooms but we could see through the glass partition into one of the rooms where the agents were talking.

Q. You saw agents in that room?

A. Yes.

Q. Did you know of your own knowledge other agents among those that you designated were in the second interview room over there?

A. Yes, that is correct.

Q. You knew that, so that during this particular period of time that you have designated shortly after 9:00 P.M. at night until shortly after 12:45 A.M. the following morn-

ing there was at least seven members of the F. B. I. in the cell block at police headquarters in the various interview rooms as well as the office?

A. No, sir, that is not correct. Mr. Roche was not there during most of the period we were over there, and I don't know how long the other agents were present in their inter- [fol. 408] views with the other defendants.

Q. You don't know that?

A. No, sir.

Q. Did you see them in and out during that particular period of time?

A. I believe on one occasion I talked to Frank Jenkins in the hallway outside.

Q. And at other times, as you say, you looked through a glass door and saw some other agents in one of the interview rooms?

A. Yes, that is correct.

Q. And that other interview room is barricaded, is it not?

A. Yes.

Q. Shortly after twelve forty-five—did you ever make any note of the time you left headquarters on the morning of January 11?

A. Yes, sir, we did.

Q. What time did you leave?

A. I believe the exact time was 12:54, but I can't say without looking at the notes.

Q. Is that your best judgment?

A. That is my best judgment.

Q. 12:54 A.M. on the morning of January 11?

A. That's right.

Q. Now, after this occasion over in headquarters, Mr. [fol. 409] Coppola was arraigned before Commissioner Butterfield on January 11, 1957 at approximately 4:00 P.M., isn't that so?

A. Not to my personal knowledge. I wasn't present at the arraignment.

Q. You were not present?

A. No, sir.

Q. Do you know whether or not it was Mr. Frank J. Liddy, Jr.?

A. I have seen the complaint so that I do know that it was Mr. Liddy.

Q. And when you say "complaint" I assume you refer to the information that was laid by Mr. Liddy as a special agent of the F. B. I. before Commissioner Butterfield?

A. That is correct.

Q. Do you know whether that arraignment occurred on January 11, 1957 at approximately 4:00 P.M.?

A. I don't know the time, but I do know that it occurred on January 11th.

Q. Is Mr. Liddy available now?

A. I frankly don't know whether he is on vacation or not. I couldn't answer that question.

Q. Is Mr. Jenkins here?

A. He is on vacation.

Q. Is Mr. Jenson here?

A. He is here.

[fol. 410] Q. And Mr. Roche is here, is he not?

A. Yes, sir.

Q. And would you be able to refer to any record that you might have made so that you could refresh your recollection as to the identity of the other agents whose names you can't recall at the present time?

A. We have records in our office to that effect, yes, sir.

Q. And they would reveal who those agents were?

A. Yes, sir.

Q. And you would refer to them, would you not, to ascertain who the other agents were?

A. Yes, sir.

Q. Do you know as to whether or not any agent other than Mr. Liddy were present on January 11, 1957 when the arraignment occurred before Commissioner Butterfield?

A. No, sir, I could not answer that question.

Q. And whatever conversation that you referred to just prior to the time that the Court granted my request for an opportunity for the presentation of proof without the presence of the jury, you were referring to the conversation that occurred in police headquarters on January 10, 1957?

A. That is correct.

Q. Now, you say that you did not go to Commissioner Butterfield's office at any time on January 11, 1957?

[fol. 411] A. No, sir.

Q. And then you did not place any charge against Mr. Coppola on January 11, 1957?

A. No, sir, I didn't prepare the complaint.

Q. And when you left somewhere around 12:54 A.M. on the morning of January 11, 1957, that is, when you left police headquarters, you just turned him back to the individual who was in charge of the cell block at the Buffalo police headquarters in the City of Buffalo, New York, is that right?

A. Yes, sir.

Q. At the time that you conducted this interview with Coppola on the night of January 10th, you had no warrant for his arrest, did you?

A. No.

Mr. Mahoney: That's all for this witness, your Honor. I would like an opportunity now to call Mr. Liddy, Mr. Jenson, and Mr. Roche.

(Discussion off the record.)

Direct examination.

By Mr. Fallon:

Q. Mr. Eddy, you testified as to some contact between Mr. Roche and the Buffalo police department. Do you know the nature of that contact or anything about it?

[fol. 412] A. Yes, sir, I do.

Q. Would you tell the Court just what it consisted of?

Mr. Mahoney: I object to that, your Honor.

Mr. Fallon: Mr. Roche himself can testify to it if it is objected to.

The Court: All you know about it, Mr. Eddy, is what Mr. Roche told you?

The Witness: That is correct.

Mr. Mahoney: Do you know when the warrant was sworn out—of your own knowledge do you know when the Federal warrant was sworn out?

The Witness: No, sir, I do not.

Mr. Mahoney: I can get hold of Mr. Roche for that.

The Court: What is it you are coming to, Mr. Mahoney?

Mr. Mahoney: This, your Honor, is relevant to the voluntary characteristics of the interview itself, and being practical, without a jury present, the groundwork for an alleged statement or confession, as it is termed, and I submit that eventually I am going to produce for your consideration—you are probably very familiar with it—the McNabb rule, under the McNabb case, the Upshaw case, the Carignan case, and eventually, I think if I get that far that I will get to the Anderson case.

The Court: I am familiar with those rules. You are a [fol. 413] long way on the outskirts here. We have a witness here and nobody asks him any questions about the voluntary characteristics of his statements.

Mr. Mahoney: He can't draw that conclusion.

The Court: If he can't, and he talked with the witness there, and he says what happened, I don't know who can.

Mr. Mahoney: As to the characteristics of it being voluntary or otherwise, he wouldn't be able to draw that conclusion. That is up to the Court.

The Court: I wouldn't know who would know any better than the agent who was right there.

Mr. Mahoney: Under that psychological pressure rule that came down to us, and one we are bound by, certainly he couldn't designate whether it was or wasn't.

The Court: He can tell us whether any force was used or any threats made. Were any threats made to Mr. Coppola that day?

The Witness: No, sir.

The Court: Was any force used in your presence?

The Witness: No, sir.

[fol. 414] Mr. Fallon: Did you advise him of his rights before he said anything?

The Witness: I told him he didn't have to talk to us and that his statement could be used against him in court and he had a right to a lawyer before he talked to us.

The Court: What did he say?

The Witness: He told us he understood those rules and that I had told them to him once before.

Mr. Mahoney: What did you have to say to him about his wife and mother?

The Witness: We asked him about their involvements in the Manufacturers & Traders Trust Company robbery.

Mr. Mahoney: What did you have to say to him about their complicity in it?

The Witness: We asked him questions about it.

Mr. Mahoney: Where did you say you had his mother and wife at the time you were interrogating him?

The Witness: We didn't.

Mr. Mahoney: Where did you say you had them?

The Witness: We didn't say we had them.

Mr. Mahoney: You didn't intimate that at all?

The Witness: No.

[fol. 415] Mr. Mahoney: At any time?

The Witness: No, sir.

The Court: We can't sit around here for two days and skirt the edge and nobody asking the question. Anything else of this witness?

Mr. Mahoney: Not for my side. I would like to have Mr. Jenson next.

Omar Jenson called as a witness, being first duly sworn on oath, was examined and testified as follows:

Cross examination.

By Mr. Mahoney:

Q. Mr. Jenson, where do you live?

A. 215 Mill Street, Williamsville, New York.

Q. I take it from what I have learned here you are a member of the Federal Bureau of Investigation.

A. Yes, sir, that's right.

Q. You have been for some time?

A. For six years, sir.

Q. On the tenth day of January, 1957 did you learn of the fact that Frank Coppola, the defendant in this case, was in custody?

A. Yes, sir.

Q. And upon learning that fact did you go to police headquarters in the City of Buffalo, New York, with Mr. Eddy?

[fol. 416] A. I was with Mr. Eddy on that date, yes, sir.

Q. Well, my question was, did you go to police headquarters with Mr. Eddy on that date?

A. Yes, sir, in the evening I did.

Q. Do you recall what time?

A. About eight o'clock we went to the police headquarters and we spoke to Mr. Coppola about nine o'clock.

Q. And at nine o'clock when you spoke to him was he in the cell block of police headquarters?

A. Yes, sir.

Q. And at that particular time did you observe other agents other than Mr. Eddy and yourself in the cell block?

A. Yes, sir, there were other agents there.

Q. You recall that, do you?

A. Yes, sir.

Q. And do you recall of seeing Mr. Jenkins there?

A. No, sir, I don't.

Q. Did you see Mr. Liddy there?

A. I don't recall, sir.

Q. Did you see Mr. Roche there?

A. Yes, sir.

Q. Do you recall the names of any other agents that you saw other than Mr. Eddy and Mr. Roche?

A. I don't recall, sir.

Q. Do you recall seeing agents other than Mr. Roche?

[fol. 417] A. Yes, sir, I believe there were other agents.

Q. Approximately how many do you recall seeing in the cell block at headquarters on January 10, 1957 between eight and nine P.M.?

A. Maybe two or three.

Q. Two or three more, and as to their names you can't recall?

A. Mr. Liddy was there; I recall seeing him.

Q. Mr. Liddy—you do recall him, do you?

A. That's right.

Q. And you recall Mr. Roche? You don't recall Mr. Jenkins, now. Do you recall any others that you saw there?

A. No, sir, I can't recall.

Q. And was it approximately nine o'clock that you started to question the defendant, Frank Coppola?

A. Yes, sir.

Q. And the questioning was being conducted by you and Mr. Eddy?

A. That's right, sir.

Q. In other words, both of you were asking questions, were you?

A. Yes, sir.

Q. And did that interrogation or questioning last until the early morning hours of the following day, January 11, 1957?

A. Until approximately 12:45, I believe.

Q. When you say you believe, are you guessing, your best [fol. 418] recollection, or is it just—

A. Yes, sir, my best recollection of the time. I did prepare a log at the time.

Q. Haven't you refreshed your recollection as to the log while this case was on trial?

A. Yes, sir, I did.

Q. What does that show if you refreshed your recollection as to how long your questioning continued?

A. I believe it was 12:54.

Q. Was that when the questioning finished?

A. That is when our interview was completed.

Q. 12:54 A.M., January 11, is that right?

A. Yes, sir.

Q. How long after that would you say you left headquarters?

A. I left headquarters maybe ten minutes later.

Q. That would be shortly after one o'clock, then, would it?

A. About one o'clock, yes, sir.

Q. Let us put it about 1:00 A.M. Now, the following day, on January 11, did you work?

A. Yes, sir, to the best of my recollection I did.

Q. And on that following day did you have anything to do with placing the information against Frank Coppola?

A. No, sir, I did not.

Q. Did you go over to the office of Commissioner Butterfield in Buffalo, New York, on January 10, 1957?

[fol. 419] A. No, sir.

Q. Do you know of your own knowledge as to whether or not Frank Coppola was arraigned on January 11, 1957?

A. No, sir, I do not.

Q. You have no knowledge of that at all?

A. No, sir. Yes, sir, I believe I do have a knowledge of the arraignment. He was arraigned in the Marshal's office. I think Mr. Butterfield came to the Marshal's office during the time.

Q. The Marshal's office on the 7th floor of this building, is that what you refer to?

A. Yes.

Q. And Commissioner Butterfield came over here, did he?

A. Yes, sir.

Q. And was that on January 11, 1957?

A. To the best of my recollection, it was.

Q. And do you recall if that was at 4:00 P.M. in the afternoon?

A. I don't recall that.

Q. Have you any recollection as to the time?

A. I believe it was in the neighborhood of 2:00 o'clock.

The Court: You weren't present yourself?

The Witness: Yes, sir, I did go up there, but I had no official part in the arraignment.

Q. Would it have a tendency to refresh your recollection [fol. 420] to know that he was arraigned in the City Court of Buffalo, New York, on January 11, 1957?

A. Yes, sir, I know that he was arraigned on the local charge at that time and thereafter he was brought over to this building.

Q. Well, then, that does refresh your recollection that his arraignment took place after two o'clock, does it, on January 11th?

A. Yes, sir.

Q. Were you in City Court at the time he was arraigned?

A. No.

Q. But you do know the arraignment in this building before Commissioner Butterfield was after the arraignment in City Court of Buffalo, New York, is that right?

A. Yes, sir.

Q. At the time you went to interview Mr. Coppola on January 10, 1957 you had no warrant for his arrest, did you?

A. No, sir, we did not.

Q. And did you attend that show-up that was in progress at the time you arrived at headquarters?

A. Yes, sir.

Q. And was it after that show-up you went to the 4th floor of the police headquarters?

A. Yes, sir.

Q. And made arrangements for you and Mr. Eddy to [fol. 421] interview, is that right?

A. Yes, sir.

Mr. Mahoney: That's all.

Direct examination.

By Mr. Fallon:

Q. This interview you have testified to started around nine o'clock?

A. Yes, sir.

Q. Did you make any threats or promises to the defendant, Frank Coppola, with regard to his testimony?

A. No, sir, we did not.

Q Did you advise him, you or special agent Eddy, advise him with regard to his rights to a lawyer?

A. Yes, sir, we specifically told him that he did not need to speak to us, if he did anything he said could be used in a court of law, and that he had a right to an attorney before speaking to us.

Q. Did you ask him any questions with regard to his wife and mother?

A. Yes, I believe he was asked if they were implicated, if they had knowledge of it.

Q. Did you tell him you were holding his wife and mother at the time?

A. No, sir, we did not.

Q. At any time did Frank Coppola ever complain to you [fol. 422] of his treatment in any way?

A. No, sir, he did not.

Q. He made no complaints of any kind?

A. No complaint.

The Court: Just one thing, Mr. Jenson. Am I right that there were other men being interviewed in adjacent

cell blocks or interviewing rooms at the same time you and Eddy were interviewing Coppola?

The Witness: Yes, sir, there were.

The Court: And these other agents, do you know what they were doing at the time you were interviewing Coppola?

The Witness: Yes, sir, they were interviewing other men.

By Mr. Fallon:

Q. Do you know of your own knowledge on what charge the defendant, Coppola, was being held at that time?

A. No, sir, I don't know the charge.

By Mr. Mahoney:

Q. Do you know, as a matter of fact, there was any charge upon which he was being held on January 10th and up to and including the morning of January 11th?

A. No, sir, I don't.

Q. You do know he wasn't being held on any United [fol. 423] States charge that had been placed by the Federal Bureau of Investigation, do you not?

A. Yes, sir.

Q. You know that?

A. Yes, sir.

Q. But as to whether he was being held on a State charge you say you have no knowledge of that?

A. I have no knowledge as to the specific charge he was being held on.

Q. You have no knowledge of that?

A. No, sir.

Colloquy Between Court and Counsel

Mr. Mahoney: That's all. Now, I think I will have to ask your indulgence, your Honor, to see what I can do with those other agents.

The Court: Let me ask you, you want to examine all the agents that were present?

Mr. Fallon: I want to say, your Honor, Special Agent Liddy who had nothing to do with this interrogation—al-

though I am accepting Mr. Mahoney's word for it, he did sign the complaint—he is in Detroit at the present time. Special Agent Jenkins, who to my knowledge had nothing to do with this defendant, is on vacation at the present time. The special agent in charge, Mr. Roche, who is presently stationed at Richmond, Virginia, is now here and he is [fol. 424] ready to testify, so he will be available. As far as the other two agents are concerned, we hadn't received any advance notice they would be required here and made no efforts to hold them here for this trial. I believe the special agent in charge at that time, John Roche, would be in possession of the facts which are necessary for the decision on this motion.

Mr. Mahoney: I don't think Mr. Roche would, your Honor. And I call to your attention as to the proof that is before you now, Roche was not in the cell block at headquarters during the particular interview other than to see him in and out and he was spoken to in the outer hall. And the question relative to the arraignment of this man on January 11th of 1957, and Mr. Liddy is the one—

The Court: There isn't any question about that.

Mr. Mahoney: As to the time there is.

The Court: The man said it was four o'clock.

Mr. Mahoney: That was me.

The Court: You were the one that developed it. I didn't get it out of my head.

Mr. Mahoney: We have had two. The second man thought it was at two o'clock and then he said it was some- [fol. 425] time later, and Mr. Eddy said he had no knowledge of it as to time; he wasn't there.

Mr. Fallon: In regard to the interrogation there were only two agents present and they have both testified.

The Court: What I am getting at is this, gentlemen: I want, of course, to give you any chance to prove anything you are trying to prove, but isn't it a little far fetched to go ahead and talk about agents who apparently had nothing to do with it, with this interview? Now, the only question before the Court now is the question of Eddy's talk with Coppola on the night of the tenth between nine o'clock and twelve forty-five. Apparently there were other agents interviewing other people. Just what they were doing I don't know. In other words, I don't think we can make a

fishing expedition out of this. If they can testify to anything, all right, but just what bearing would Mr. Liddy or somebody else who apparently took no part or say they took no part have? If you have evidence he did take part in it that is something else.

Mr. Mahoney: I want to be candid with the Court. Two things I would like to say, and it is just this: first, I trust that you haven't thought I am on a fishing expedition be- [fol. 426] cause I assure you I am not. And secondly, I want the presence of those men as to their activities during that particular siege of hours, their three hours at police headquarters after these men had been in custody from ten o'clock or thereabouts on that same day.

The Court: What good would it do? Suppose you have Agent Jones who is there all the time interviewing John Smith, talking to him, how would that affect the problem I have before me?

Mr. Mahoney: As to his activities, going in and out of the respective cells or out of the respective rooms and in.

The Court: Suppose he went into Jones' cell five times. What difference would that make in a room some distance away where Coppola is involved?

Mr. Mahoney: I would say, your Honor, that would bear out, in my humble opinion, a psychological pressure from the presence of agents who were congregating in a cell block at police headquarters.

The Court: The only evidence so far is they could see him in one adjacent room. Go ahead, proceed. I am going to go along, except it seems we ought to have some limit. There must be some limit to this. I will let you produce [fol. 427] anyone that knows anything about the problem we have before us, but I don't think we ought to be concerned with what some particular agent had to do with some other particular defendant.

Mr. Mahoney: I don't other than their presence.

The Court: Presence in the same building?

Mr. Mahoney: Not in the building, in this small cell block at police headquarters.

The Court: It doesn't appear here yet.

Mr. Mahoney: I am going to develop that.

The Court: I would say you had better begin to develop it. How are we going to get anywhere unless there is something here? These things can't be in dispute. As I see it, if we have one interview or two interview rooms or three interview rooms we should have no dispute about it. There is nothing before me except there is one interview room and at least one other. This last man indicates that other agents were detailed to interview other persons brought in in connection with not with this robbery at all but another, the robbery that they were arrested for on January 10th. I am going to let you proceed. Proceed. If you want a minute—

. . . . . .

[fol. 434] Gordon Eddy recalled as a witness for the Government, having been previously duly sworn, was examined and testified as follows:

Redirect examination.

By Mr. Fallon:

Q. Mr. Eddy, you told us yesterday that you began an interrogation of the defendant, Frank Coppola, around nine o'clock?

A. That's right.

Q. What did you tell him with regard to his rights at that (sic)

[fol. 435] A. We told him that he did not have to talk to us, that any statement that he did make to us could be used against him in Court, and that he had a right to a lawyer.

Q. When you began your conversation with him did he make any complaints to you with regard to lack of food, drink, and so forth?

A. No, he made no complaints.

Q. Did he say he was mentally tired or physically tired at that time?

A. No, sir.

Q. Did he appear to you to be nervous or afraid?

A. No, sir.

Q. Would you tell the Court at what time the defendant Coppola first made an admission to you with regard to the robbery of the M. & T. Bank?

A. I have my notes here and they show that at 9:02 we advised him of the rights--

Mr. Mahoney: I object to that and ask to have it stricken out. That is not responsive.

The Court: Overruled.

Mr. Mahoney: It is not responsive to the question.

The Court: Overruled.

A. (Continuing) At 9:04 the interview commenced and at 9:41 Mr. Coppola started to tell us about the crimes he [fol. 436] was involved in.

Q. His participation in that?

A. That is correct.

Q. During the time you were interviewing the defendant, Frank Coppola, was there anyone else in the room other than Mr. Jenson or anyone that came into the room during the time of the interview?

A. Yes, sir.

Q. And who came in and what did they do? Who was the first one to come in the room?

A. Mr. Dwyer came into the room.

Q. The District Attorney of Erie County?

A. That is correct.

Q. What did Mr. Dwyer do when he was in the room?

A. He showed Mr. Coppola a boot.

Q. Overshoe?

A. Overshoe.

Q. Did he do anything else?

A. He and Coppola talked for a couple of minutes. I didn't enter into the conversation and paid no attention to it.

Q. With regard to this overshoe?

A. That is correct.

Q. And then did he leave?

A. That is correct.

Q. Did anyone else enter the room?

[fol. 437] A. Yes, sir.

Q. Who else?

A. Mr. Roche came in.

Q. What did he do when he was in the room?

A. He sat and listened to the interview for a few minutes and then he left.

Q. Did he take any part in the interview?

A. No, sir.

Q. Did anybody else come into the room?

A. Mr. Jenkins of our office.

Q. Did he come into the room?

A. No.

Q. What did he do?

A. He came to the door and asked if he could see me for a moment.

Q. Did you go out in the hall?

A. Yes

Q. You had a conversation with him out in the hall?

A. Yes, sir.

Q. Did the defendant hear your discussion in any way?

A. No.

Q. Then what did Mr. Jenkins do after that discussion?

A. As far as I know he returned to our office.

Q. The defendant, Coppola, you said made his first admission relative to the robbery at 9:41?

[fol. 438] A. That is correct.

Q. Can you tell us whether the defendant talked rather freely at that time?

Mr. Mahoney: I object to that.

The Court: Overruled.

A. Yes, sir, he talked very freely.

Q. Did he also talk about other matters when you were in there?

A. Yes, sir.

Q. At your behest or of his own volition?

A. Voluntarily he brought out other matters.

Q. Did there come a time—

Mr. Mahoney: My objection to all of this is on the ground that these are conclusions.

The Court: Make your objection on the record.

Mr. Mahoney: I object to that on the grounds it is a conclusion.

The Court: Overruled.

Mr. Mahoney: Respectfully except.

Q. Did there come a time when you got a written statement from the defendant Coppola?

A. Yes, sir.

Q. What time was that?

A. At 11:37 we started the statement.

[fol. 439] Q. And that was after he had already made these oral admissions to you to which you have previously testified?

A. Yes, sir.

Q. Was he again advised of his rights before giving this statement?

A. It appears in his statement he was advised of his rights, yes, sir.

Q. Was he actually advised of his rights?

A. Not again orally—

Q. Did he read the statement after it was prepared?

A. Yes, sir.

Q. The statement recites the same thing you recited at the beginning of the interview, is that correct?

A. That is correct.

Q. At any time during this interview with the defendant, Coppola, did he make any complaints to you of any kind?

A. The only thing he asked for was some cigarettes and we obtained them.

Q. And you obtained some cigarettes? Did you also get him some cigarettes after the interview?

A. Yes, sir.

Mr. Fallon: No further questions.

Recross examination.

By Mr. Mahoney:

Q. After recess yesterday in this Court, you, together [fol. 440] with agents conferred with Mr. Fallon, did you not?

A. Yes, sir.

Q. Was it at Mr. Fallon's office?

A. Yes, sir.

Q. And at that particular time you conferred with him relative to the testimony that you were to give this morning when you were put back on the stand?

A. Well, generally, yes, sir.

Q. Yes, that is what you conversed about. Now, you say here this morning that at 9:41 Mr. Coppola started to tell you and this other agent—Ransom, was it?

A. Jenson.

Q. That was at 9:41?

A. Yes.

Q. And what was at 9:02—is that when you started the interrogation?

A. That is when we first started to talk to Mr. Coppola.

Q. What was occurring between 9:02 and 9:41?

A. Well, we related to him some of the evidence that we had developed in the case as against him.

Q. In other words, you were telling him certain things, right?

A. It was a matter of both.

Q. You were telling him and in response to what you were telling him he was telling you, is that it?

[fol. 441] A. It was a matter of both, yes, sir.

Q. But you said at 9:41 he started to tell you certain facts, is that correct?

A. Yes, sir.

Q. Did your interrogation of him from 9:02 to 9:41 take up what you were telling him?

A. No, sir, it didn't take up the entire time.

Q. What took up that thirty-nine minutes that elapsed between 9:02 and 9:41?

A. When we first entered the room the first thing I told him was that he was entitled to an attorney, that he didn't have to make any statement and that any statement that he made could be used against him in Court. Then prior to our interviewing him there had been an incident which occurred at police headquarters involving the flushing of a jacket down a sewer, and Mr. Coppola spent considerable time telling us how he tore this jacket up into shreds and flushed it down the toilet.

Q. All right. You say he took some time. Was the manner in which he stated that "I took the jacket and I ripped

it piece by piece and as I ripped it I put it in the toilet and then I flushed the toilet," is that correct?

A. That is correct.

Q. That is the substance of it?

A. Yes.

[fol. 442] Q. That didn't take any length of time, did it?

The Court: Don't argue; ask him questions.

Q. How much time would you say that that took? Do you have any note in there of the time?

A. No, I haven't.

Q. You have got no note on that?

A. No, sir.

Q. Now, outside of the jacket, what else occurred? You said you told him he didn't have to make a statement, that he was entitled to a lawyer and any statement that he made could be used against him, and then he talked about a jacket?

A. That is right.

Q. That was in the first thirty-nine minutes of your contact with him?

A. Yes, sir.

Q. How much time did it take, if you know?

A. I can't tell you specifically how much time we spent discussing the case with him, but I pointed out a few of the items we had developed in our investigation, and it ended up in his making the statement he was a gambler, that he knew that the F. B. I. was investigating him, that as a gambler he had lost and he was willing to lay his cards on the table and tell us what it was about.

Q. In order for him to tell you he knew the F. B. I. [fol. 443] was investigating him, what time was taken on that—a minute?

A. Oh, no, it must have been—must have constituted a majority of the thirty-seven minutes before he finally made—

Q. You say it must have been; would you be able to tell us from your notes as to how much time it took for him to tell you he knew the F. B. I. was investigating him?

A. That statement he made was just prior to his admission.

Q. Would you know as to how much time it took him to tell you that statement or to make the statement that he knew the F. B. I. was investigating him?

A. I couldn't say specifically. It would be a period of approximately thirty minutes.

Q. Thirty minutes to tell you that fact alone?

A. To reach that point. We discussed the case up to that point.

Q. Well, to inform you he knew the F. B. I. was investigating him.

The Court: Do you mean, Mr. Mahoney, the time it took to say these words?

Mr. Mahoney: Yes.

The Court: Then ask him so and we can get somewhere?

Q. How much time was it?

The Court: Do you mean does he know the time it took [fol. 4447] to say these particular words you are using?

Mr. Mahoney: Yes.

The Court: Then ask him that question.

The Witness: That was a matter of seconds to make that statement.

Q. How much time did it take him to tell you that he was a gambler?

A. That was a matter of seconds, also.

Q. Seconds?

A. That is what I thought you were referring to, Mr. Mahoney.

Q. How long did it take him to discuss with you about the few items you pointed out to him?

A. The period we discussed the case with him and pointed out what we had developed I would say took approximately one-half hour.

Q. A half-hour?

A. That is correct.

Q. And during that time you were discussing the case?

A. That is correct. During that time he kept asking if we could make any deal with him, if we would make him any promises as to what would happen to him, if we would let him talk to the United States Attorney and see if the United States Attorney would make him any deals.

The Court: In other words, it was a two-way conversa-
[fol. 445] tion?

The Witness: That is correct, sir.

Q. In other words, you have just stated he wanted to talk to the United States Attorney—he requested that, did he?

A. He said he would like to talk with the United States Attorney and see if the U. S. Attorney would make a deal with him.

Q. And what did you have to say to that when he asked to talk to the U. S. Attorney?

A. We told him he was in State custody and we had no control over the U. S. Attorney's office.

Q. And you made no effort to locate the U. S. Attorney or make contact with him, is that right?

A. No, sir.

Q. Did I understand you correctly to say at the time John A. Roche came in, the agent in charge of the Buffalo office, he merely sat there and listened and then left?

A. That is correct.

Q. How long was Mr. Roche in the office would you say, listening?

A. I couldn't tell you specifically, but I would say no more than five minutes and probably considerably less.

Q. Do you have a notation to that effect?

A. No, sir.

Q. Did you have any conversation with the defendant dur-
[fol. 446] ing this particular time about his wife and mother?

A. Yes, sir.

Q. And what were you discussing with him about his wife and mother?

A. We asked him the part that both of them had in the Manufacturers & Traders Trust Company robbery and other crimes in which we were interested.

Q. And would you know as to how long that discussion took place?

A. That was all intermingled with the whole interview.

Q. Did he ask for permission to contact his wife and mother?

A. No, sir.

Q. And as a result of the conversation that you had with him about his wife and mother he denied to you, did he not, and told you they had no complicity or any part in it at all?

A. That is correct.

Q. They were not involved?

A. That is what he told us.

Q. Did you discuss as to where they were at that particular time?

A. Not to my recollection, we didn't.

Q. Could it be that your recollection would be such you wouldn't recall that you told him where his wife and mother was in this conversation?

[fol. 447] The Court: I don't understand the question. Rephrase it.

Q. Is your recollection such that you do recall of having said something to Coppola about the whereabouts of his wife and mother at that time?

A. He asked us if his wife and mother were going to be arrested or if we intended to arrest his wife and mother, and I told him I couldn't answer that question.

Q. And that is all you had to say about that, that you couldn't answer it?

A. He continually brought the matter up throughout the interview.

Q. And when you say he continually brought the matter up was that the matter relevant to his wife and mother?

A. That is correct.

Q. Did he bring it up in connection with or on any other basis or any other manner other than the fact as to whether or not you were going to arrest both of them or any one of them?

A. I don't understand what you are driving at.

Q. Did he talk to you about his wife and mother relative to some other factor other than as to whether or not you were going to arrest either one of them?

A. Well, he kept insisting they were not involved in any of the crimes in which he was involved.

[fol. 448] Q. And that particular time was your answer always the same, you couldn't answer that for him?

A. We were asking him—

Q. Well, I am asking you now relative to the arrest of his mother and wife, when he made queries along that line, were you constantly answering him you couldn't answer that question?

A. I don't see what you are driving at yet—as to whether the Government intended to arrest his wife and mother?

Q. As to whether or not you or Jenson intended to arrest his wife and mother.

A. No, sir.

Q. Was there any conversation between you and the defendant wherein you stated to the defendant the possibility of his wife and mother being material witnesses or being held as material witnesses?

A. No, sir.

Q. None at all? By the way, on January 11, 1957, you were in the office of the F. B. I. in this building at or about eight or nine o'clock in the morning, weren't you?

A. Yes, sir.

Q. And you were at the office throughout the entire day, were you?

A. No, sir.

Q. Well, you were in touch with the office, weren't you? [fol. 449] A. I was at home the latter part of the day.

Q. Did you report for work at about eight or eight-thirty, the usual hour?

A. No; I worked through from seven o'clock the preceding morning until January 11 around two or three in the afternoon.

Q. Then do I understand when you left headquarters somewhere around one o'clock in the morning of January 11th, you came back here to your F. B. I. headquarters?

A. That is correct.

Q. And you were at headquarters here up to and including the latter part of the same afternoon?

A. Until late in the morning or early afternoon, yes, sir.

Q. And would that be approximately noon time when you say "late in the morning or early in the afternoon"?

A. Somewhere in that vicinity, yes, sir.

Mr. Mahoney: All right.

Further direct examination.

By Mr. Fallon:

Q. Did the defendant, Frank Coppola, ask for immunity for his wife and mother if he talked?

A. Yes, sir.

Q. What did you tell him?

A. We told him we couldn't make him any promises of any kind.

[fol. 450] Q. Did you say anything to him with regard to his statement with regard to his wife and mother?

A. Yes, sir.

Q. What did you tell him with regard to that?

A. I told him that if he wanted to insert in his signed statement anything concerning the part his wife and mother had in this crime that he was free to do so as it was his statement.

Q. Incidentally, how was that statement done? Did you write it out or did he?

A. I prepared the first two paragraphs and he sat beside me while I wrote and then he dictated the remainder of the statement himself.

Q. But the first two paragraphs—by that you are referring to what?

A. The statement with relation to the fact that he had been advised of his rights, and the paragraph relating to his address and place and date of birth.

Q. And then he dictated the balance?

A. He dictated the balance verbatim.

Q. He read it?

A. He read it.

Q. And signed it?

A. Signed it.

[fol. 451] Further cross examination.

By Mr. Mahoney:

Q. You say he dictated the remainder. By that, who did he dictate to?

A. Me.

Q. Are you a stenographer?

A. No, sir.

Q. Do you take stenographic notes?

A. No, sir.

Q. Did you have an Ediphone or a Dictaphone or a Stenotype?

A. No, sir, in longhand in his presence.

Q. You wrote it out in longhand?

A. He was sitting right beside me when I wrote.

Q. You say he dictated? He talked while you wrote?

A. He talked while I wrote.

Q. Is it your contention you wrote verbatim every word uttered?

A. Yes, sir.

Q. It is a verbatim statement?

A. It is a verbatim statement.

Q. And is there a change on it that the defendant made relative to his mother and wife?

A. That I can't recall from memory.

Q. You can't recall? Was there a change in the statement or an addition made to it relative to his wife or mother?

[fol. 452] A. The statement was all one unit, and when he finished dictating the statement he read it over and he signed the statement.

Q. Was there anything added to it either prior to the time or after the time he signed it on January 11, 1957?

A. No, sir.

Q. After the statement was signed it has been in your possession ever since that time?

A. Yes, sir.

Q. And you say you took it down verbatim?

A. Yes, sir.

Mr. Mahoney: That's all.

Mr. Fallon: No further questions.

OMAR JENSON was recalled as a witness for the Government, and having been previously duly sworn, was examined and testified as follows:

Redirect examination.

By Mr. Fallon:

Q. Mr. Jenson, I believe you testified yesterday you began the interrogation of Frank Coppola about 9:00 P.M., is that correct?

A. Yes, sir, that is correct.

Q. At the beginning of your interrogation did you or Mr. [fol. 453] Eddy advise him of his rights?

A. Yes, sir, he was advised of his rights immediately by Mr. Eddy.

Q. And what was that advice?

A. He was advised that he need not make this statement, that any statement made could be used against him in a court of law, could be used in a court of law, that he had a right to an attorney.

Q. At the beginning of this interview did Frank Coppola make any compl. ints to you in regard to lack of food or drink or anything on that order?

A. No, sir, he did not.

Q. Did he make any complaints to you he was tired mentally or physically?

A. No, sir, he did not.

Q. Did he appear to you to be tired or to be nervous?

A. No, sir.

Q. Or to be afraid?

A. No, sir.

Q. Do you recall about what time that the defendant, Frank Coppola, first made an admission with regard to the M. & T. bank robbery, or about how long after the interview began?

A. It was about thirty-five minutes, I believe.

Q. Then the interview continued on until what time? [fol. 454] A. Until 12:54.

Q. During the time of your interview do you recall whether anybody else entered the room?

A. Yes, sir.

Q. And who entered the room during the course of the interview?

A. Mr. Roche entered the room.

Q. Did he take any part in the interview?

A. No, sir, he did not.

Q. Who else entered the room?

A. Mr. Dwyer entered the room very briefly.

Q. The District Attorney of Erie County?

A. Yes, sir.

Q. Did Mr. Dwyer have some discussion with the defendant?

A. He showed him a boot which had been taken from another man.

Q. He showed him a boot which had been taken from another man?

A. Yes, sir.

Q. How long was he in the room?

A. Very briefly.

Q. And this discussion which he had with Frank Coppola at that time, did that have anything to do with the M. & T. robbery?

A. No, sir, none whatever.

[fol. 455] Q. During the course of the interview which you said lasted until around 12:45 or one o'clock did he make any complaints to you with regard to anything having to do with food or drink or the fact that he was tired or anything of that nature?

A. No, sir, he did not.

Q. Did he ask for anything at all?

A. He asked for a cigarette.

Q. What did you do about that?

A. Neither Mr. Eddy or I smoked so I went out in the hall on two occasions and got cigarettes from police officers and returned to the cell and gave them to Coppola.

Q. After he began talking about the M. & T. robbery did he talk freely?

A. Yes, sir, he did, very freely.

Q. Did there come a time when he signed or made—signed a written statement?

A. Sir?

Q. Did there come a time when he signed a written statement?

A. Yes, sir.

Q. Do you recall how that statement was taken?

A. Yes, sir; Mr. Eddy took the statement and Mr. Eddy took the statement, I believe, with the exception of the first paragraph; the rest was dictated quite as he had given it.

[fol. 456] Q. During the course of your interview at any time did the defendant appear to you to be nervous or afraid?

A. No, sir, he did not.

Q. Or overly tired?

A. No, sir.

Q. Did he ask you for immunity for his wife and mother if he made a confession or if he talked? Did he ask for immunity for his wife and mother?

A. Yes, sir, he did.

Q. What did you reply to him?

A. We told him we could make no promises whatsoever.

Q. Anything else said about that, that you recall?

A. We told him that we would not—he made some suggestion he be taken or that the United States Attorney be brought to us, that he was interested in making a deal.

Q. What did you tell him about that?

A. We told him we would not do that, he was in State custody and that we could not arrange for such a thing.

Q. Now, did you do anything with this man other than question him?

A. No, sir, we did not.

Q. Did you threaten him?

A. No, sir.

Q. Did you promise anything?

A. No, sir.

[fol. 457] Q. Did you abuse him in any way?

A. No, sir.

Q. Did you strike him physically?

A. No, sir.

Mr. Fallon: No further questions.

Recross examination.

By Mr. Mahoney:

Q. Mr. Jenson, you say he made no complaints about food or drink, is that so?

A. No, sir, he did not.

Q. Did you make any inquiry about that when you went in there?

A. No, sir, we did not.

Q. None at all?

A. No, sir.

Q. You weren't concerned with it, were you?

The Court: He made no inquiry about it.

Q. Do I understand you correctly that the time was about 9:02, was it, that you started to talk to this man?

A. 9:04, sir.

Q. 9:04?

A. Yes, sir.

Q. And, of course, that was P. M. at night?

A. Yes, sir.

[fol. 458] Q. And during the first thirty-five minutes of the conversation, was that a conversation that was engaged in by you and Mr. Eddy talking with the defendant?

A. Yes, sir. We discussed information that we knew about his being, about his participation in the bank robbery and about his recent activities, and we did most of it.

Q. You did most of the talking, right?

A. Yes, sir.

Q. And approximately thirty-five minutes later would be about 9:39 P. M., would it not?

A. Yes, sir.

Q. And at 9:39 P. M. is when Mr. Coppola started to talk?

A. Yes, sir.

Q. And when would you say that Mr. Eddy started to prepare the written statement?

A. To the best of my recollection he probably started about 11:45.

Q. 11:45 P. M.? And during that particular two hours that transpired or was consumed between 9:39 P. M. and

11:45 P. M. you and Mr. Eddy were engaging in your conversation with Mr. Coppola, were you not?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. How long would you say that Mr. Dwyer was in that [fol. 459] room where you and Mr. Eddy were conversing with Coppola?

A. I would say at the most not over a minute.

Q. And how long was Mr. Roche in there?

A. He was in the room perhaps three or four minutes.

Q. Yesterday after the adjournment of Court, did you compare notes with Mr. Eddy and Mr. Fallon?

A. Did I compare notes?

Q. Yes.

A. No, sir.

Q. Didn't you have any discussion relative to what transpired January 11, 1957 at police headquarters?

A. Yes, sir, we had some discussion.

Q. And in that discussion did you use your notes?

A. No, sir, I didn't.

Q. You didn't? In regards to this written statement, how was it taken, do you recall?

A. He told us that he wanted to make his statement; he dictated it. As he dictated his statement, Mr. Eddy took it, wrote it down at that time.

Q. At the time he was talking to Mr. Eddy was he talking in the manner that I am talking to you at the present time?

The Court: Do you mean the speed?

Q. Yes, was he talking in the manner in which I am talking to you as far as expression is concerned?

[fol. 460] A. Your question is not clear to me, sir.

Q. In regards to the, say the number of words that I am using in a minute in questioning you, at that time was that the way that Mr. Coppola was talking to Mr. Eddy?

The Court: In other words, I think the question is, did Mr. Coppola talk as fast as Mr. Mahoney is talking?

The Witness: No, sir, he would talk and Mr. Eddy would write a few words and then Coppola would add a few more words as he wanted the statement to be.

Q. And after he took a few words, who would stop him, if anybody, at that time?

A. Mr. Eddy would stop him.

Q. In other words, the man would express a thought and Mr. Eddy couldn't write to keep up with his manner of talking, is that right?

A. Yes, sir.

Q. So Eddy would stop him?

A. Yes, sir.

Q. And then Eddy would have him go back and pick up the other part of the expression that he wasn't able to write, is that the manner in which it was handled?

A. Yes, sir.

Q. You did have a discussion with this man about his [fol. 461] mother and wife, did you not?

A. Very brief discussions.

Q. Do you recall discussing with him the extent of their complicity in the M. & T. job?

A. Yes, sir. We merely asked him if they were involved and he said no.

Q. And he denied that?

A. Yes, sir.

Q. Was that the extent of the conversation you had with him?

A. Yes, sir, to the best of my recollection.

Q. Wasn't he asking something about the fact as to whether or not his mother and wife would be held as material witnesses?

A. As a material witness?

Q. Yes.

A. No, sir.

Q. Nothing like that was discussed?

A. To the best of my recollection.

Q. Did you ever hear anything said in that room while you were there no promises could be made relevant to their being held as material witnesses?

A. There was a short discussion about their not being involved, but there was no discussion about their being material witnesses.

Q. Nothing about that?

[fol. 462] A. No, sir.

Q. And nothing about immunity, for them?

A. Well, yes, he did say that he would be willing to sign a statement if he was assured that no prosecution would result against them. He was interested in seeing the United States Attorney; he wanted to make a deal.

Q. And did he say in so many words, as you have just stated in substance to me, he would sign a statement if his mother and wife were protected, or words to that effect?

A. He said that if he could be assured they were not prosecuted he would sign a statement admitting the robbery.

Q. And, of course, you gave no assurances, did you?

A. No, sir.

Q. Did you know at the time you went in there on that particular night, that is, into headquarters, and I mean on January 11, 1957, as to what, if any, charge the defendant was being held on by the State officers?

A. By the State officers?

Q. Yes, sir.

A. No, sir, I did not.

Q. You made no inquiry about that?

A. No, sir, I did not.

Q. But you had learned in your office here in the Federal Building prior to eight o'clock that night that the man was in custody, had you not?

* * * * * *

[fol. 463] A. Yes, sir, that's right.

Q. How early in the day had you learned of that?

A. I don't recall, sir.

Q. Was it in the morning, do you recall, or was it in the afternoon?

A. I don't recall, sir.

Mr. Mahoney: That's all.

Mr. Fahon: No further questions. With regard to the voluntariness of the confession, your Honor, the Government rests.

The Court: All right.

FRANK R. COPPOLA called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mahoney:

Q. Mr. Coppola, on January 10, 1957 at or about 9:45 A.M. were you in the City of Buffalo, New York?

A. Yes, sir, I was.

Q. And at or about the intersection of Babcock and Clinton Streets did something occur while you were riding in a car?

A. Yes, sir.

[fol. 464] Q. Would you describe to the Court what occurred at that particular time? By the way, were you driving that car?

A. No, sir.

Q. Would you describe to the Court what occurred?

A. Well, we was coming down Clinton and turned into Babcock, and there was quite a heavy snowfall and there was sort of a little hill and we was trying to get up that hill.

Q. Just tell us what happened. Who approached you, if anybody?

A. Well, a car pulled alongside and had a shotgun hanging out of the window and it was pointing at us, the people in the car; I was one of them, and they told us to pull over, and they jumped out of the car and stuck that shotgun at us and told us to stick our hands up or they would blow us away.

Q. How many men got out of the car?

A. Three at that time.

Q. Were they armed?

A. All of them were armed.

Q. And as a result of that, were you eventually taken to police headquarters?

A. Yes, sir.

Q. Do you recall as to approximately the time you arrived at the Buffalo police department?

A. I would say shortly after ten or about ten. I didn't [fol. 465] have a watch with me.

Q. In the morning?

A. In the morning.

Q. When you were taken to police headquarters what was done when you got there?

A. Well, there was a lot of photographers that snapped pictures of us as soon as we entered the building, and I tried to cover up.

Q. What was done insofar as the police were concerned?

A. They just threw me in a cell, put me in a cell and then—

Q. At that particular time had you asked for anything?

A. Yes, sir, I asked the guard there, the one that locks up the doors, I asked him about food—"When do we eat?" And I told him I didn't have any breakfast, and he said, "This isn't a cafeteria; we didn't ask you to come up here."

Q. And after that what was the next step that was done insofar as police headquarters was concerned?

A. They took us out for a line-up. They took me out; I was separated from the other individuals that were arrested with me and they made us stand in line, and then they opened the door and there was a room full of people there and they put us up in front of the lights on a platform, told us to turn to the left and the right and about face and front face and stand this way and stand this way (sic) and say this and that and other things, and I believe at that [fol. 466] time they told us to put on some stocking masks over our face.

Q. Did you put them on?

A. Yes, sir.

Q. And how long did that line-up last?

A. Oh, I would say about a half hour at least.

Q. And where were you taken from there?

A. Back to the—from there we went back either to the cell or they took us to the— elieve right from there they took us down to the detective reau.

Q. How long were you in the detective bureau, or—first of all, who did you see there?

A. I seen a woman and I seen a man I believe to be a State Police officer, a State investigator.

Q. You mean of the New York State Constabulary?

A. That is what I mean. And several detectives—or at least I took them to be detectives, and the officers that arrested me, excluding the officer that was holding the shotgun.

Q. Was there an officer who followed you from cell block to line-up and from the line up to the detective bureau with a shotgun?

A. No, they didn't. That wasn't necessary.

Q. I see. Now, when you got in the detective bureau, what was done with you?

[fol. 467] A. Well, they questioned me. They interrogated me about robberies, and so on, and so forth, and I told them I didn't know what they were talking about. They asked me how long did I have the shoes I had on my feet. I told them quite some time, and they said, "What do you mean?" I said, "I don't know; I bought them about a year, maybe longer." They were winter shoes, fur-lined, and I had them in the attic, and because of the heavy snowfall I took them out and wore them. They said they had the prints of them shoes in an armed robbery. I told them, "Well, they mustn't be my prints." They said they were the prints of my shoes, and I told them that they couldn't be because I wore the shoes for the first time that day.

Q. Did they give you your shoes back?

A. Yes, sir. They gave them shoes back. As a matter of fact, they didn't even look at the prints of the shoes, they just said they had the prints of the shoes. They didn't compare the prints of the shoes at any time.

Q. Was anything said at that time relevant to searching your apartment?

A. Yes, sir, a police officer there says, "Frank, do you mind if we search your apartment, or do we have to take out a search warrant?" I said, "Yes, you can search my apartment as long as you take me home with you and I will [fol. 468] be there so you don't tear up the joint." And he says, "Well, sure, that is agreeable with me." And I said, "Besides, I like to notify my people of my whereabouts." At that time I asked him if I could make a phone call and he says, "A little later on," and I asked also for a lawyer.

or to call my lawyer, and he just looked at me and laughed and said, "Where do you think you are, in a hotel?"

Q. How long would you say you were at the detective bureau at headquarters, have you any recollection?

A. Oh, I would say approximately a half hour or an hour. I didn't look at a clock.

Q. Where did you go from the detective bureau?

A. Back to the cell.

Q. The cell block?

A. The cell block; back to the same cell I occupied previously.

Q. While you were in the cell block did you see anybody that is connected with the police department or the Federal Bureau of Investigation?

A. I seen a lot of people, and one of them came and he said, "Frank," he says, "Where is the key to your apartment?" He said, "We searched your clothes." He said, "Let me look in your clothes," and he opened the cell block and he shook me down, and he said, "Where is it?" And I said, [fol. 469] "What do you want to know for?" And he said, "We want to get in your apartment." He said, "If you don't tell us we will break the door down and you will wind up with a broken door." At that time my wife and I only had one key, and we would have to have a description of my apartment to explain it. We put the key on the inside—or on the outside—

Q. Without any explanation, just tell us what happened.

A. Well, anyway, I explained it to him.

Q. Wait a minute, please. Did you tell him where it was?

A. I told him where the key was so he wouldn't damage the place.

Q. What other statements were being made in there by anybody at that particular time to you?

A. Well, that is about all that he said to me, except that I says, "I'm hungry and I haven't had anything to eat since yesterday evening at supper time," and he says, "Well, we don't feed around here." I said, "Well, I have got the money," and he says, "Give me the money."

Mr. Fallon: At this point I would like to object to this. It hasn't been established there was any Federal custody

and this has no bearing on this case unless it is established that this had something to do with the Federal authorities.

The Court: I think I will take it briefly.

[fol. 470] The Witness: I gave him the money.

Q. Who did you give the money to?

A. I gave it to Klenk, and I believe Klenk gave it to an officer that had the key in his hand. I am not positive; I wouldn't swear to that. Anyway, he brought me up a tuna fish sandwich that was so—I couldn't eat it anyway; I threw it in the toilet. And he brought me up a pint of milk in a glass container and I started to drink the milk and the guard with the key in his hand said, "You are not allowed glass in the cell," so they took the milk away from me. I asked for cigarettes; they didn't bring me any cigarettes. They said they couldn't buy them because there weren't any in the building.

Q. Did you see anybody connected with the F. B. I. at that time?

A. Yes. Thereafter they brought me down to an office, and it had a slab in there like something they carry a body on, and Mr. Dwyer and Mr. Roche was in that room. And I come in and they introduced them as the District Attorney of Buffalo and the head of the F. B. I. Bureau in Buffalo, and they asked me to come clean, they got me cold and I might as well look for the best way out.

Mr. Fallon: I object to that. I would like to know who asked what, and to have that clarified.

[fol. 471] Q. Do you recall who spoke? Which of those two were asking you questions or making those statements?

A. Well, Mr. Dwyer, and Mr. Roche was in there, too, because I was sitting in beween both men. Mr. Dwyer was on my right in the position I was sitting and Mr. Roche was on my left.

Q. Were they both making statements?

A. They were both asking me questions, if that is what you mean.

Q. All right, now. How long would you say that you were in a conference room with Messrs. Roche and Dwyer?

A. I couldn't say exactly, Mr. Mahoney.

Q. What is your best recollection?

A. Well, it was quite a while because I remember Mr. Dwyer was trying to hammer it in my head if I signed a statement we could get some sort of a deal and be tried as a first offender and have all these crimes wrapped up in one, and I told them I wouldn't make no deal.

Q. After you finished in that conference room with Messrs. Roche and Dwyer, where did you go?

A. I believe at that time they took me to another cell. They took me back to a cell.

Q. Were you then taken to some other cell in some other part of headquarters?

A. Yes, sir, back in the line-up room.

[fol. 472] Q. And was there another line-up?

A. Yes, sir, there was.

Q. At that time were you in it?

A. Yes, sir.

Q. Were there people in there in the room?

A. In the room itself?

Q. Yes.

A. Yes, sir, there was many people in there.

Q. And after that line-up—that is, the second of the line-ups you have testified to—after that was completed where did you go?

A. At that time we went back to the cell; I went back to my cell.

Q. When you got back to your cell, did anybody converse with you back there?

A. No, there was nobody around there. There was a guard there and I called to him and I said, "Gee, what have they got me in for, what am I being charged with?" He said, "I don't know. Whatever it is it is pretty bad or Mr. Golombeck wouldn't be in on it, I am sure."

Q. Eventually was there another line-up?

A. Yes, sir, there was.

Q. Do you have any idea as to the time of day that third line-up occurred?

A. It was getting dark outside. I wouldn't know the time [fol. 473] because I was—there was no watch or clock or anything I could tell the time by, and the windows were all frosted, but it was getting dark out, and just about that

time they pulled me out of there again and arranged me in a corridor to file into the line-up room.

Q. At that particular time, when it was getting dark, had you received any food from the police department or any other source?

A. No, sir, other than that tuna fish sandwich that I threw away, there was nothing. I asked for food. I said, "When do they feed? They must feed around here sometime?" I felt they had a schedule of some kind.

Q. What did they tell you when you asked for food around dark?

A. They told me they just didn't serve meals up there, when they got through with me they would give me food, but it wouldn't be up there, because they just don't serve food up there.

Q. From the time you were taken into headquarters at ten o'clock and up to the time it was getting dark that same night, with the exception of that sandwich that had been brought back to you and the milk that was taken away from you, had any food been given to you?

A. No.

Q. Was any food given to you after it was dark?

[fol. 474] A. No, sir, I still hadn't eaten.

Q. Do you eventually recall seeing Mr. Eddy and Mr. Jenson?

A. Jenson, yes, sir.

Q. Do you recall seeing those two later that testified this morning and yesterday?

A. Yes, sir.

Q. And up to the time that you saw them had you had any food or anything to drink?

A. No, sir, I didn't.

Q. Would you have any recollection of your own as to the time Mr. Jenson and Mr. Eddy contacted you at police headquarters?

A. No, sir, but I remember looking at the time, because I was rather hungry and it was just a glance at the clock; in that part of the building where I was there was a clock there.

Q. Where was that in headquarters?

A. It was an office of some sort with a desk or so in there and some papers. I believe it was the office used by the detectives or police officers of that building.

Q. And what time was it when you looked at the clock?

A. It was approximately eight or eight-thirty. As a matter of fact, I mentioned it to Mr. Jenson and he remarked to me it was about eight or eight-thirty because I [fol. 475] thought it was about six.

Q. Now, where did you first meet Mr. Eddy and Jenson at police headquarters on January 11, 1957?

A. On that cell block floor when they took me to the office I previously described.

Q. When you got in the office what conversation did you have with them?

A. Well, the first thing when I walked into the office, Mr. Eddy says, "Well, hello, Frank," and he previously interrogated me about close to a year before this and I said, "Hello, Mr. Eddy," and he says, "Well, you are in another jackpot, aren't you?" And I said, "No, I don't think so," and I sat down and he went on to tell me that they had me cold, and he went on to say that they had my wife and mother—my wife in a Niagara Falls' jail and had my mother, too, and I said, "Well, you can't hold them; they have nothing to do with anything." And they said, "Well, Frank, we can but that is up to the United States Attorney." I requested to see the United States Attorney. I said, "Well, can I see him and tell him that?" They said, "No, Frank. We just can't let you see the United States Attorney." I said, "Well, can I see a judge?" And they said, "What judge?" I said, "A Federal Judge. I want to tell him, the judge that is going to be in charge of this case if it [fol. 476] ever comes to trial." He said, "No, we are just F. B. I. agents; we just can't make this kind of request." And he said, "We want you to tell us just all about these robberies." I said, "I have nothing to say; I can't tell you anything." And they went on to question me and ask me about that robbery, and so on, and I said, "You ought to know about that. I am not going to tell you anything. Take me back to my cell." And they said, "Wait a minute, Frank, take it easy, take it easy." At that time Mr. Dwyer passed through the door. I can't remember whether he came in and

talked to me about the boot. I remember at some time during the investigation that he did talk to me about a boot. I can't remember or recall that he came into that room at that time. But he showed me a name written in this boot, and it was the name of another fellow. Anyway, it was then I asked for cigarettes. I said, "I am out of cigarettes. I have got to have a cigarette." So, they turned around—I think it was Mr. Jenson—turned around and said, "Mr. Dwyer, do you have any cigarettes?" And he reached in his pocket to get a cigarette and he says, "Don't you have any cigarettes, fellows?" And he said, "No, we don't smoke." And he said, "Coppola wants a cigarette." I wouldn't care to go on and say what he said.

The Court: Go ahead. We won't be shocked.

[fol. 477] The Witness: He said, "I wouldn't give that son of a bitch the sweat off my—

Mr. Mahoney: "Balls"?

The Witness: —balls."

The Court: That was Dwyer, the District Attorney?

The Witness: Yes, sir. He didn't give me a cigarette and he didn't give the police officers, the F. B. I. agents, a cigarette, and they went out and bummed a cigarette off a cop out there.

The Court: You got your cigarette?

The Witness: They gave me a cigarette.

The Court: All right, go ahead.

A. (Continuing) Then I was smoking that and they were asking me questions and questions and questions, and in the meantime they kept telling me about my wife and m[illegible] being in jail. I kept telli[illegible] them, "My wife is in Canada, working, she couldn't be in jail." And they said, "We stopped her at the Canadian border." And I says, "What did they have to do with this? What do you want to pin something on a woman and a young girl for?" And they said, "Well, Frank, it isn't us. We just are here to see that justice is done. The United States Attorney's office has charge of that." I says, "Let me see the United States Attorney. I will tell him," and [fol. 478] they said, "Oh, we can't do that. If you sign that paper now we will put it on the United States Attorney's desk tomorrow morning and at that time make a recom-

mendation to him for consideration that the case against your wife and mother be dropped." I said, "There is no case against them." They said, "Well, your mother and your wife will be held as material witnesses," and I said, "Well, if they are they are probably out on bail already." And he said, "No, we can hold them without bail." He said, "Have you ever been in the Niagara Falls jail, Frank?" And I said, "Yes, sir." And he said, "You know how filthy it is over there?" I said, "Yes, sir." He said, "Would you let your mother and wife stay in that jail? I know if it was my mother and wife, I wouldn't." I said, "It sickens me to think about it." At that time it was getting close to midnight because the shift changed. They took me from that room, that room where Dwyer and Roche had told me they had to use the office and we couldn't occupy it any longer. It was about midnight, I believe, and they took me into a second room and there they were interrogating me as to what would happen to my wife and mother, didn't I have any respect for my family, and that my wife and mother were in jail suffering for this and they are suffering for that, and why don't I tell them that I robbed this bank [fol. 479] and they will go ahead and make a recommendation to the United States attorney and he would probably in turn release them because they don't care to prosecute my mother and wife, and so forth and so on. At that time I requested water. I remember I drank about a quart of it because Mr. Jenson was going back and forth bringing in the water and I felt rather embarrassed for him to make those trips. Anyway, Mr. Eddy and Mr. Jenson—Mr. Jenson wasn't saying too much but Mr. Gordon Eddy he kept saying, "Jesus, Frank, don't you care about your mother and wife?" I said, "Look, fellows, I can't sign that." I said, "Come back tomorrow and I will sign that, or let me see the United States attorney," and they said, "We can't do that." And I said, "I am disgusted; I am tired, and I am sick. I feel like throwing up. You keep telling me about my mother and wife in jail." I said, "They have never been arrested in their life; they don't know what it is all about. How do they feel there in prison with a matron over them?" I said, "The thought of it is getting my guts in a knot." "Well," he said, "Frank, we can go right over now and

present this to the United States Attorney and maybe he can make a telephone call and have your mother and wife released." All through this I wanted to make a phone call. I asked for a lawyer. I told them to talk to my lawyer. He said, "Who is your lawyer?" And I said, "Any lawyer. [fol. 480] Pick up the phone book and pick out anyone and that is my lawyer." I don't care to discuss any of this stuff with them, and the more I told them they said, "Frank, this is your last chance. If you wait until tomorrow to talk to us we are not going to give you another chance like this and we are not going to go over to you tomorrow if you don't sign this statement tonight and in the meantime your wife and mother are going to have to sleep in that jail." And I said, "That jail has no mattresses or pillows or any linen facilities," and they said it would be pretty low to keep them in there all night. I said, "Well, I just can't sign any statement." And they kept that up for a while longer and finally Mr. Eddy time after time after time kept saying my mother was in that jail and I finally told them, "I will sign." I said, "Give me the paper, I will sign." They said, "Wait a minute," and they started writing. Mr. Eddy started writing and he wrote a couple of paragraphs on the paper, and he says, "Now, did you do so and so and so and so?" And I said, "Yes," and he wrote that down. And then he said, "Did you do so and so and so and so?" And to this day I can't remember what he put on that paper. And I reread it—I was too upset at the time to read, but I read it and I put on there, "I exonerate my wife and mother from any implications," or something to that [fol. 481] effect, "of any crime whatsoever." And Mr. Roche come in and I asked him, before I signed that paper I asked him, "Mr. Roche," I said, "You are the boss man around here." I said, "Can't you guarantee me my wife and mother will be out of jail tonight? What is the idea, is that all the F. B. I. has got to do is prosecute women and girls?" And he said, "No, we are not interested in prosecuting them," he said, "But what is law is law and we have to go by the law," and Mr. Eddy said, "Mr. Roche couldn't do that; that is up to the United States Attorney." And he asked me for facts on the statement, and he said, "When we present this to the judge," he said, "We want to have facts," and I

said, "I don't know any facts." And he said, "Tell us the facts, Frank, in order to get a better break with the judge." I said, "I am not interested in what kind of a break the judge gives me; I am only interested in the welfare of my mother and wife." He says, "Well, how about facts?" I said, "There is no facts." I said, "What is done is done." I went to snatch the paper and I said, "Give me the paper; I will put facts on there. I don't care nothing about facts as long as my wife and mother are released." I believe I wrote it or Eddy wrote it, "There is no facts to this because what is done is done," and I put on there, "I exonerate my [fol. 482] wife and mother from any implications," and they said, "How is that going to look in front of a judge?" I said, "I don't care how it looks in front of a judge." And he says, "Well, Frank, all right, okay, if that is the way you want to do it." I said, "How about buying me some cigarettes?" And he said, "Sure, sure, kid, we will buy you some cigarettes," and I gave him a quarter out of my pocket and they asked the guy where the cigarette machine was and he said there was none in the building. He asked the police officer in the corridor and they had to go someplace for cigarettes. I went back to my cell; it was about 2:30 in the morning; when I got there there was a couple of donuts and a cold cup of coffee, at 2:30 in the morning. I was there about a second or two until they brought me back to fingerprint me and took my height, weight, scars, and so on, identification pictures, and then back to the cell and it was about 3:30 in the morning, and at that time at 3:30 or four o'clock—

Mr. Fallon: I object to this. This is after the confession was made and I don't see what bearing it has.

Mr. Mahoney: I will agree.

Q. Mr. Coppola, up to and including the time you signed that statement that you have just referred to, had you [fol. 483] had anything to eat or drink?

A. No, sir, nothing at all.

Q. From the time of your arrest on the morning of the 10th until that was signed sometime on the morning of the 11th of January, 1957?

A. Just the little paper cups of water Mr. Jenson brought me.

Q. Did you make that statement voluntarily?

A. No, sir, I didn't. I would never voluntarily give that statement. It was because of the fact that my wife and mother was said to be suffering and they told me I could release them, and I was advised by the F. B. I. the only way I could release them was to give a statement.

Q. Did you make that statement in fear of the fact if you didn't the F. B. I. would hold your wife and mother as material witnesses?

Mr. Fallon: Objected to.

The Court: Overruled.

A. I believed it, that's right. I believed positively that they were in jail. I couldn't see no reason for the F. B. I. lying to me. And, as a matter of fact, I remarked to Mr. Jenson later, "Mr. Eddy lied to me about holding my wife and mother in jail," and I said I was mad at Mr. Eddy and Mr. Eddy came over and said, "I heard you were mad at me," and he said, "They were holding your wife and mother [fol. 484] and they were keeping them," and so forth and so forth, but I said, "You told me they were in jail." And he tried to get me to sign another statement then and I refused to sign it.

Q. Up to and including the time you signed this particular statement had you been arraigned on any charge before any magistrate or commissioner or judge?

A. I didn't see anybody.

Q. Did you request to see your mother and your wife?

A. I requested, and I requested to make a telephone call so they wouldn't worry sick about me, and that was refused and the buck was passed. "Well, see so and so and see so and so," and in the meantime I wasn't going no place near a telephone.

Q. This request you made to contact an attorney or to see the U. S. attorney, was it refused?

A. Every time they refused, yes, sir.

Q. You were arraigned on January 11, 1957, were you?

A. Yes, sir.

Q. Your first arraignment, do you recall in what court it took place?

A. In the City Court of Buffalo.

Q. Sometime after that on the same day were you arraigned before the United States Commissioner?

A. Yes, sir.

[fol. 485] Mr. Mahoney: You may ask, Mr. Fallon.

The Court: Take a short recess.

(Whereupon the Court was in recess, and at 11:15 A.M. the jury was returned to the courtroom and the following proceedings had:)

The Court: Ladies and gentlemen, I apparently am not a good estimator of time, and no one is at fault about this, but your services won't be needed until two o'clock this afternoon. I am going to let you go until two o'clock this afternoon. Don't talk about this case; don't speculate on the reasons for this because they are matters of law with which you are not concerned, and don't try to make any decision or draw any conclusion either as to the facts or any of the circumstances. You are excused until two o'clock this afternoon. Pass out quietly, please.

(Whereupon the jury retired from the courtroom and the following proceedings had in the absence of the jury:)

(Mr. Coppola resumed the stand.)

Cross examination.

By Mr. Fallon:

Q. As I understand it, on January 10th you were picked up around 9:45 A.M., is that correct?

[fol. 486] A. As near as I can remember.

Q. Who were with you at the time?

A. I was with Dario D'Antuono and Joseph Simmons.

Q. Whose car were you in?

A. In Dario D'Antuono's brother's.

Q. What time did you get up that day?

A. Oh, I'd say seven, seven-thirty or in that vicinity.

Q. And you hadn't had breakfast at 9:45, is that right?

A. No, sir, I didn't.

Q. Had you made any plans about your breakfast?

A. I thought I would eat later when I got a little hungrier.

Q. Where were you going at the time you were picked up?

A. I was on my way back to Synakowski's house, or Simmons'. He has changed his name.

Q. Do you recall what day of the week it was?

A. It was either on a Tuesday or a Thursday because my wife goes to work that morning, and I got up early that morning to shovel snow off her car.

Q. Do you work? Did you work before your arrest?

A. I worked on and off, Mr. Fallon.

Q. You were being paid by the Coppola Banana Company, weren't you, at that time?

A. Well, you couldn't call it being exactly paid. They were paying me—it was my father's wish I take over that business. I would contact markets and sometimes drive from Niagara Falls to New York City at four o'clock in the morning.

[fol. 487] Q. You were being paid every week, weren't you?

Mr. Mahoney: I object to this. I think it should be confined to 9:45 and thereafter.

The Court: In any event, you weren't working that day, were you?

The Witness: I wasn't working, no, sir.

Q. You were just going over to Mr. Simmons' house, is that correct, at the time you were picked up by the police?

A. Yes, sir.

Q. That was the extent of your plans at that time?

A. Yes, sir, at that time that was the extent of my plans.

Q. You say you were interrogated about robberies. What robberies were you interrogated about by the Buffalo police?

A. All sorts of robberies—the extent of them I just can't remember, but there was robberies, armed robberies, burglaries, and so on and so forth that happened throughout Buffalo and Niagara Falls.

Q. Then the interrogation clearly did not confine itself to the robbery of the M. & T. Bank in any way?

A. When Mr. Dwyer questioned me in front of Mr. Roche it was on the M. & T. Bank.

Q. The M. & T. Bank was mentioned, but several other robberies were mentioned as well?

[fol. 488] A. They pointed out their information on other robberies, but by cooperating on the M. & T. Bank I would get a break on everything.

Q. Who said that?

A. Either Mr. Dwyer or Mr. Roche.

Q. Do you remember who said it?

A. I don't remember. Both men were talking at the same time.

Q. Were you interrogated about the robbery of Paul Redlinski?

Mr. Mahoney: I object to that.

The Court: Overruled. He stated he was kept so long; we have a right to find out what kept him.

A. I wasn't interrogated about the Redlinski robbery. They questioned me about it—they asked me briefly, "You won't be robbing any more banks and you won't be sticking up any more butchers."

Q. That is what I mean when I say you were questioned about the Redlinski robbery.

A. Very briefly.

Q. Were you questioned about the robbery of a person over in Niagara Falls by the name of Kojanik?

A. I don't know if that was the name or not, but it was a robbery.

[fol. 489] Q. A robbery in Niagara Falls—isn't that where the policeman came in with regard to the footprints, in regard to that robbery?

A. I don't recall, sir.

Q. You don't recall what robberies they asked you about?

A. Well, they asked me so many things, Mr. Fallon, and it was confusing, and at the time I had had all those guns stuck in my face and stomach, and I was just upset over being in jail and over the fact that it would be upsetting my family.

Q. You say that was the first day that you wore those shoes?

A. Yes, sir.

Q. When did you buy them?

A. I ordered those shoes by mail.

Mr. Mahoney: I object to this.

The Court: It was brought out on direct. Overruled.

A. I ordered those shoes by mail. I can't remember the company, but it is a salesman that comes around.

The Court: When did you buy them, one week before, one day before or what?

The Witness: At least a year previous.

Q. You bought them a year previous but you wore them for the first time that day?

A. No, they weren't worn for the first time that day; it [fol. 490] was the first time of that season.

Q. The first time of the season?

A. For the first time on snow. In other words, they were snow shoes and I put them away for working in the banana house.

Q. Well, generally what you mean is it isn't the first time you wore them, is it?

A. No, sir.

Q. When you asked, as you say, for permission to call a lawyer, who did you ask, do you recall?

A. I asked everybody I come in contact with and no one there would let me use the phone.

Q. And you say you asked to call "my lawyer". Who was "my lawyer" at that time?

A. I was referring to Mr. Sbarbati. I believe I mentioned it once or twice and then some one spoke about Mr. Sbarbati being on a murder trial, and I said, "Call any lawyer. I want a lawyer. I want some one to notify my wife and my mother of my whereabouts."

Q. Do you recall anybody specifically to whom you spoke?

A. I asked Mr. Eddy; I asked Mr. Roche; I asked Mr. Golombeck; I asked the turnkey; I asked Mr. [redacted]enk; and I asked several other officers.

Q. You asked practically everybody you saw?

A. Just about everybody I saw.

[fol. 491] Q. What time of the day was this tuna fish sandwich given to you?

A. Oh, I didn't have a clock; I can't swear to what time it was.

Q. About what time? How long had you been in custody?

A. A minute seems like an hour but—

Q. What?

A. I said a minute seems like an hour in custody in that jail. I believe it was sometime around noon or after or a half an hour or around there after.

Q. You said on your direct testimony you thought it was around six o'clock, whereas in fact it was eight-thirty, so a minute couldn't have seemed like an hour there, could it?

A. You mean it was around six o'clock?

Q. On your direct testimony you said when the agent started to interrogate you or when you went down to the cell block to be interrogated that you thought it was around six o'clock but in fact it was eight-thirty.

A. I said that, yes, sir, I did.

Q. With regard to this tuna fish sandwich which you say you got around noon, you say you hadn't had anything to eat that day so far according to your testimony?

A. No, sir, I didn't.

Q. But you threw the sandwich away?

[fol. 492] A. Yes, sir, the sandwich was rotten and distasteful and made with stale bread.

Q. Rotten and distasteful?

A. And made with stale bread. And I mentioned it to them and one of the guards said, "I eat those sandwiches all the time." I said, "I don't believe that."

Q. Isn't it a fact that you refused food that day?

A. No, sir, I didn't refuse food.

Q. By "rotten" do you mean that it was putrid?

A. Well, the word "putrid"—

Q. Was it edible?

A. I didn't consider it edible, no, sir.

Q. You didn't consider it edible according to your standards, but was it edible?

Mr. Mahoney: I object to that; that is argumentative.

The Court: Yes, it is argumentative. You can tell us how it looked to you.

The Witness: Well, your Honor—

The Court: You weren't so hungry anyway you ate it;

you threw it down the toilet and flushed it down, isn't that about the size of it?

The Witness: Yes, sir, that is about the size of it.

Q. At that time you saw Mr. Eddy and Mr. Jenson did [fol. 493] you make any requests to them about getting any food or anything to drink?

A. Well, I asked for water repeatedly.

Q. They got that for you, didn't they?

A. Yes, sir.

Q. Did you make any other requests along those lines?

A. I mentioned the fact that I was very hungry and I hadn't eaten.

Q. On your direct testimony you said "rather hungry" didn't you? You said it and I wrote it down.

A. I mentioned it to Mr. Eddy and Mr. Jenson that I was hungry or rather hungry, and I didn't feel in my mind Mr. Eddy or Mr. Jenson was responsible for the feeding of me at that time, or any time, so far as that goes.

The Court: Did you ask Eddy or Jenson for anything to eat?

The Witness: No, sir, I didn't.

Q. When this interrogation by Mr. Eddy and Mr. Jenson began do you remember discussing at some length with them about the facts with regard to the Remington murder at Lewisburg Penitentiary? Do you remember spending some considerable time on that subject?

A. No, sir, I can't remember that.

Q. You don't remember saying anything about that?

A. I might have and I don't remember if I did.

[fol. 494] Q. Do you remember telling him you flushed a jacket down the toilet?

A. No, sir, I didn't tell them that. They asked me if I flushed a jacket down the toilet. The jacket disappeared and they asked me what happened, and the general opinion was the jacket was flushed down the toilet because they found a thread of it down there.

Q. Did you flush it down the toilet?

A. No, sir, I didn't.

Q. What did you do with it?

A. I don't know what happened to it. I believe a police officer took it.

Q. You said, as I understand your testimony, that the only thing you did with regard to any admissions was sign a written statement, is that right?

A. Yes, sir.

Q. You never made any other admissions of any kind, is that right?

A. No, sir, not that I remember. I don't think I made any kind of admissions whatsoever.

Q. Isn't it the fact of the matter shortly after you went in there for interrogation around 9:35 or 9:40 you began telling them in detail how you perpetrated the M. & T. bank robbery?

A. No, sir, it isn't.

[fol. 495] Q. It is not?

A. No, sir.

Q. All the details they have with regard to that and were told to them, those were not so?

A. [redacted]ame out of their mouth only.

Q. It came out of their mouth?

A. That came out of their mouth. They told me what the details were, how it was done and what part I took in it, and so forth.

Q. What did you say to them?

A. I said, "I can't say anything and I can't sign anything."

Q. Did you say that they told you they had your wife and mother in the Niagara Falls' jail, is that what you said?

A. Yes, sir, that is definitely what they told me.

Q. Did they say what they had them in there for?

A. Material witnesses.

Q. Material witnesses for what?

A. Against me.

Q. Material witness against you for what?

A. For these crimes that they got me charged with.

Q. Did you have any knowledge of any information which they had with regard to the crimes you have been charged with?

A. I didn't understand.

Q. Did you have any knowledge of any information which they had or might have with regard to the crimes you have been (sic)

[fol. 496] A. No, sir.

Q. You didn't?

A. I didn't have knowledge of any information that they had?

Q. That's right.

A. I didn't have any knowledge of any information that they had in regard to the crimes I have been charged with?

Q. Yes.

A. No, sir, I had no knowledge of any information they had or might have had. They just told me they were involving them because of the fact that they were my mother and wife and they believed they were implicated in some way.

Q. What made you think they would keep them in jail if they didn't know anything or hadn't done anything?

A. Mr. Fallon, when it comes to my mother and wife and someone tells me they are in jail nothing makes sense anymore to me. I would sign my life away for my mother and wife.

The Court: You would lie because somebody told you your mother and wife were in jail?

The Witness: Would I lie?

The Court: Yes, would you lie because a police officer or somebody told you your wife and mother were in jail?

The Witness: I suppose I would, your Honor.

The Court: And do you say you did that?

The Witness: No, I didn't lie—I didn't lie so far as [fol. 497] telling them they weren't involved in anything.

The Court: I meant lie about anything you told them.

The Witness: Yes, sir, I would lie and I lied that night.

The Court: I see.

Q. You lied, you mean, when you gave the statement you committed the M. & T. robbery?

A. Yes, sir, I did.

Q. Is it a fact you now contend you didn't commit the robbery?

A. I have always contended.

Q. You have always contended?

A. Yes, sir.

Q. On January 14 when Mr. Eddy visited you in jail didn't you tell him you were going to make these claims you are now making, and he told you that you knew they weren't so and you replied you knew it wasn't so but you were going to make them anyway?

Mr. Mahoney: I object to that.

The Witness: No, sir.

Mr. Mahoney: I believe that Mr. Fallon at this time must confine himself to January 10th and the early morning hours of January 11th.

The Court: Overruled.

[fol. 498] Q. And there is no conversation of that type that took place at all?

A. The conversation of that type was, Mr. Eddy and I was having a heated discussion—at least I was hot, I don't about him—about the fact that he lied to me about my mother and wife being in jail and incarcerated at that time, and I was very angry with him because he had lied to me when I was trying to be nice at the time, and I told him I was begging him at that time to release them or do something to get them out of jail, and that was the only discussion we had later on.

Q. If I am to understand you correctly, you confessed to an armed robbery of a bank knowing, as I imagine you must have known, which called for a severe penalty, is that right?

A. Yes, sir.

Q. To get your mother and wife out of jail when you had no information, direct information, they were in fact in jail, is that correct?

A. That is correct, and I had no information that they weren't in jail.

Q. It is your contention here in repudiating this confession that in fact you didn't commit these crimes?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Buyers?

[fol. 499] A. Yes, I did.

Q. Was he telling the truth?

The Court: I won't permit that. I think you said the F. B. I. got you some cigarettes, didn't you?

The Witness: Yes, sir.

The Court: Is there a single thing you asked for either from Jenson or Eddy that they didn't give you?

The Witness: Yes, sir.

The Court: What was it?

The Witness: To leave me alone and let me go back to my cell.

The Court: When you asked for cigarettes they got them for you?

The Witness: Yes, sir.

The Court: When you asked for water, they gave it to you?

The Witness: Yes, sir.

The Court: Is there anything else physically you asked for that they refused to get?

The Witness: No, sir, other than seeing the people and making the telephone calls they was pretty nice about it.

The Court: How old are you?

[fol. 500] The Witness: Twenty-four years old.

The Court: Where were you born?

The Witness: In Buffalo, New York.

The Court: Where were you educated?

The Witness: In Niagara Falls, New York.

The Court: What school?

The Witness: 13th Street School; Hyde Park School.

The Court: That is a public school?

The Witness: Yes, sir, Hyde Park School in Hyde Park, Niagara Falls.

The Court: What kind of a school is that?

The Witness: It is a public school. Gaskill Junior High School; I went to Kelly's Business Institute at Niagara Falls. It is sort of like a night college.

The Court: How long did you go there?

The Witness: Approximately a year or less—just less than a year. Studied accounting.

The Court: Studied accounting?

The Witness: Yes, sir. And I furthered my education

when I was incarcerated by the Federal Government. I went to school at the Federal Institution at Chillicothe, Ohio, and I studied accounting and typewriting and business law.

[fol. 501] The Court: How far did you go in high school?

The Witness: To the tenth grade.

The Court: That is the second year of high school?

The Witness: I finished the ninth or finished the tenth. I think I reenlisted for the tenth or enrolled for the tenth and didn't go through with it.

The Court: Went part way through the tenth, is that what you mean?

The Witness: No, your Honor, it is very hazy. I remember when I was looking for my high school equivalent diploma—I was studying for my equivalent diploma when I was incarcerated this last time, and I believe I had a ninth grade education, or I took the equivalent test before I went on to study. It is real kind of hazy to me.

The Court: You subsequently obtained a high school equivalent certificate?

The Witness: They didn't give you a certificate, but I studied at Chillicothe and I was then shipped to Lewisburg Federal Institution at Lewisburg, Pennsylvania.

The Court: What has been your business experience?

[fol. 502] The Witness: My business experience, your Honor, is buying and selling in the banana business. I have taken trips out of town to buy in large quantities for the Coppola Banana Company. I have been in Florida, throughout Florida, buying watermelons and so on and so forth, and have negotiated with the Standard Fruit Company of the United States in New York City; went to Pittsburgh to negotiate buying when there was a strike on in the banana boats, or the dock workers, and I was pressed for produce to sell and I ventured into Pennsylvania to talk to some of the bigger corporations down there to see if they would lend me a hand and get over this crisis.

The Court: Your business experience is limited to employment in your folks' place of business in the Niagara Falls Frontier, some place like that?

The Witness: Yes, sir.

The Court: Have you worked otherwise? Your business experience is what I want.

The Witness: Otherwise I was a lathe operator at the Carborundum Company, but I don't consider that business. I kept books for the United States Government at Lewis- [fol. 503] burg, their accounting books and the record books of the produce and miscellaneous items coming in and out, and the price of them and the weight of them and the inventory of them, and with my business knowledge of typing I kept payroll records for the United States Government at Lewisburg, Pennsylvania, and so on and so forth. I was in and out of the office doing various work for the Government until my eyes started bothering me, until I got tremendous headaches and I was removed from there and went to the hospital, and there I studied in my spare time psychology and psychiatry, and then I was released.

The Court: What was the condition of your health in February, 1956?

The Witness: The condition of my health in February was very good. There was nothing wrong with my health. Nothing physically and nothing mentally. I was very healthy, very strong; very healthy and felt good, terrific.

The Court: I think I should have said 1957—January, 1957, what was the condition of your health?

The Witness: Well, the condition of my health up until the time of my arrest was perfect then, and since then it has been going down steadily. I believe I have lost 30 or [fol. 504] 35 pounds—I haven't got on a scale—and I have lost a couple of inches on my forehead.

The Court: Then at that time your health was good?

The Witness: My health was good on the day of my interrogation.

The Court: All right, that's all. Is that all, gentlemen?

Mr. Fallon: That's all.

Mr. Mahoney: I have nothing further.

HARRY G. KLENK called as a witness, being first duly sworn on oath, was examined and testified as follows:

Cross examination.

By Mr. Mahoney:

Q. Mr. Klenk, you are a member of the Buffalo Police Department?
A. Yes, sir.
Q. And your rank is what?
A. Lieutenant.
Q. And how long have you been connected with the Buffalo Police Department?
A. Since 1924.
[fol. 505] Q. And on January 10 of 1957 you were a member of the police department, were you?
A. Yes, sir.
Q. And on that particular day were you the head of what was known as the Homicide Squad?
A. Yes.
Q. And you had been on that particular squad for a period of years?
A. Yes, sir.
Q. Now, on January 10, 1957 were you in an automobile in the vicinity of Clinton and Babcock Streets in the City of Buffalo, New York, at or about 9:30 or 9:45 on that day?
A. Yes, sir.
Q. Was Chief of Detectives Golombeck with you?
A. Yes, sir.
Q. And was Golombeck's nephew with you?
A. Yes, sir.
Q. And what is his name?
A. Segit.
Q. And who was driving the car?
A. Chief Golombeck.
Q. At that time were you armed?
A. Yes, sir.
Q. And was anybody in that car armed with shotguns?
[fol. 506] A. Yes, sir.

Q. How many of the occupants?

A. One.

Q. Was that Mr. Segit?

A. Yes, sir.

Q. And you and Golombeck, I would assume, were armed with the usual thirty-eight caliber police positive revolvers, is that right?

A. Yes, sir.

Q. On that particular morning did you see a car that was occupied by Frank Coppola, a passenger by the name of Simmons and one by the name of D'Antuono?

A. Yes, sir.

Q. At the particular time you saw that car was any crime being committed in your presence?

A. No, sir.

Q. Did there come an occasion when Chief of Detectives Golombeck ordered that car to pull over?

A. I ordered the car.

Q. You ordered it?

A. Yes, sir.

Q. At the time you ordered it, do you know about the position—I think I used the expression "shotgun"—was I correct in that?

A. Yes, sir.

[fol. 507] Q. Was that shotgun protruding out one of the side windows of the car?

A. I don't know.

Q. Was Mr. Segit sitting to the rear of you?

A. Yes, sir.

Q. At the time you ordered it over did you have a drawn revolver?

A. Yes, sir.

Q. And did Mr. Golombeck?

A. I don't know.

Q. And as a result of the order that you gave that car was brought to a stop, is that right?

A. Yes, sir.

Q. At that particular time you saw that one of the occupants of that car was the defendant, Frank Coppola?

A. Yes, sir.

Q. And did you order him into the police car?

A. Yes, sir.

Q. Did you make an arrest of him at that time or inform him he was under arrest?

A. We took him into custody.

Q. Did you inform him that he was under arrest?

A. Well, we didn't use the exact word "arrest". We said, "We are going to take you down to headquarters for questioning."

[fol. 508] A. And as a result of your directions, he got in your automobile, is that right?

A. Yes, sir.

Q. Was he taken to police headquarters?

A. Yes, sir.

Q. And you arrived there in the morning, did you not, on January 10, 1957?

A. Yes, sir.

Q. When you took him into headquarters did you charge him with any offense of a state law or Federal law?

A. Not at that time, no, sir.

Q. You didn't?

A. No, sir.

Q. In other words, after you got him there, what did you do—put him in a cell block?

A. Yes, sir.

Q. Without any charge being placed against him?

A. Yes, sir.

Q. Now, to your knowledge, was he kept in that cell block at Buffalo Police Headquarters throughout that day?

A. Well, he was taken out at different times during the day.

Q. Was he taken out solely for the purpose of taking him to the show-up room?

A. Show-up room and interrogation.

Q. And that would take place in either one of the confer-[fol. 509] ence rooms off the cell block or in the detective bureau?

A. In the Homicide office.

Q. In the Homicide office?

A. Yes, sir.

Q. During that particular day would you say you arrived at headquarters some time around ten o'clock that morning?

A. I would say it would be closer to eleven o'clock.

Q. About eleven?

A. Yes, sir.

Q. During that entire day did you ever place any charge against Coppola?

A. No, sir.

Q. You are familiar with the records of police headquarters, are you?

A. Yes, sir.

Q. Do you know as to whether or not Detective Golombeck placed any charge against him that particular day of January 10, 1957?

A. To my knowledge I don't believe there was any charge placed that day.

Q. And during that particular day, this is January 10th of 1957, did you see any members of the Federal Bureau of Investigation of the Buffalo office in police headquarters?

A. Yes, sir.

Q. And did you see them in there sometime or shortly [fol. 510] after the arrival of yourself and Chief Golombeck and the defendant, Coppola, at police headquarters?

A. As I recall, it was about two o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. And where did you see them—in the detective bureau?

A. Yes, sir.

Q. And at that particular time would you have any recollection as to the length of time that you saw them in or about the detective bureau of the Buffalo Police Headquarters?

A. Well, they were there probably an hour or an hour and a half that I recall now. They might have been there longer than that but I wasn't in their presence.

Q. During all that time you weren't?

A. No, sir.

Q. But you do have a recollection they were there about an hour or an hour and a half?

A. That would be my recollection.

Q. And then later on that same evening did you see any of the members of the F. B. I. in the Buffalo Police Headquarters?

A. Yes, sir.

Q. And would you have any recollection as to the hour that you saw them there?

[fol. 511] A. Well, yes.

Q. What time did you note their presence at police headquarters?

A. Shortly before nine P.M. and then again at ten and then about twelve-thirty A.M.

Q. And on those occasions did you see them in the cell block of Police Headquarters?

A. Yes, sir.

Q. And at that particular time have you any recollection as to the approximate number of F. B. I. men you saw in the cell block of Police Headquarters?

A. As I recall, there were about seven. Now may I say that the seven wasn't there all the time. Part of the time six was there.

Q. And did you see them all in the cell block with the exception of that one you said was not there all the time?

A. That's right.

Q. What part of the cell block were they occupying at the time you saw them?

A. Well, it wasn't in the—I think one of the persons we had picked up was in the office of the cell block and the others was just outside the office. There is a glass office in the cell block at headquarters.

Q. Is that what is known as a conference room down there?

A. Well, it is a room where the guard is stationed.

[fol. 512] Q. Well, are there conference rooms down there?

A. There is one.

Q. One?

A. Yes, sir.

Q. Did you see any of them in and out of that conference room at that time?

A. I can't recall, no, sir.

Q. When you got into headquarters close to eleven o'clock on the morning of January 10, 1957, you and other members of the Buffalo Police Department talked with Coppola, did you not?

A. Yes, sir.

Q. And you talked with him in the hours of the afternoon, did you not, when he was taken out of the cell block?

A. Yes, sir.

Q. And when you say you saw the F. B. I. men in the cell block about 9:00 P.M., were you able to talk to Coppola between the hours of 9:00 P.M. and 12:30 P.M., which is the hour you said you last saw the members of the F. B. I. there?

A. Well, we didn't talk to him.

Q. You didn't talk to him?

A. No, sir.

Q. Was that because the members of the F. B. I. were conversing with him at that time?

[fol. 513] A. Yes, sir.

Q. Now, on January 11 of 1957 did you place a charge against Coppola?

A. Yes, sir.

Q. At approximately what time of day did you place such a charge against him?

A. About 1:00 P.M.

Q. That is 1:00 P.M.?

A. Or shortly before, maybe ten minutes to one.

Q. And after that was Coppola arraigned in the City Court of Buffalo, New York?

A. Yes, sir.

Q. Were you present at that arraignment?

A. Yes, sir.

Q. Did that take place at approximately two o'clock or shortly thereafter on that day?

A. Yes, sir.

Q. At the time that this command was given by you for this car to pull over and the automobile pulled over did you have a warrant in your possession for Coppola, a warrant for his arrest?

A. No, sir.

Q. Did you ever have a warrant in your possession for the arrest of Coppola up to and including 2:00 P.M. or shortly thereafter on January 11, 1957?

[fol. 514] A. No warrant, no, sir.

Q. In other words, during this period of approximately

ten o'clock in the morning of January 10th when you say that you arrested him on suspicion, is that correct?

A. Yes, sir.

Q. And you held him on suspicion until one o'clock or ten minutes to one of January 11, 1957?

A. Yes, sir.

Q. Do you know of any provision contained in the Code of Criminal Procedure of the State of New York that authorizes a man to hold a man on suspicion and deprive him of his liberty?

Mr. Fallon: I object to that question. It is loaded.

The Court: Sustained.

Mr. Mahoney: Respectfully except, your Honor. You may ask.

Direct examination.

By Mr. Fallon:

Q. Are you aware of the events leading up to the arrest of Frank Coppola and others on January 10, 1957, or were you operating under the orders of Mr. Golombeck?

A. Both.

Q. You are aware of the events, then, are you not?

A. Yes, sir.

[fol. 514a] Q. On this day you went out in the patrol car had you received some information relevant to a crime which was about to be committed?

A. Yes, sir.

Q. Had you also previously received some information to the effect that Frank Coppola and others had staged a robbery or held a robbery on Paul Redlinski, a butcher?

Mr. Mahoney: I object to that.

The Court: Overruled.

Mr. Mahoney: Exception.

Q. Did you, yourself, have any information?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you have any other information as far as your

own personal knowledge is concerned other than that there was something planned on that day relevant to a robbery, future plans?

A. The information we had was there was to be a robbery committed that day.

The Court: What kind of a robbery?

The Witness: Robbery on a tavern on Clinton Street.

Q. That planned robbery, or allegedly planned robbery, was one within your jurisdiction as a local police officer, [fol. 515] was it not?

A. Yes, sir.

Q. Do you know whether or not the F. B. I. had any connection or has any jurisdiction over such a robbery?

A. They don't have, no, sir.

Q. Therefore, as I understand you, when you made this apprehension of the defendant Coppola, and others it was on your own, you were not operating under instructions from the F. B. I. or any Federal authorities, were you?

A. No, sir.

Q. With regard to the charge being placed against the defendant, Coppola, you stated in your recollection it was placed on the 11th of January. Would it refresh your recollection if we showed you the police blotter as to when the charge was actually placed? Do you think that would refresh your recollection as to when the charge was actually placed?

A. I have looked at the police cards.

Q. What did the police cards say?

A. The time on the police cards say it was after 3:00 P.M. on the day of the 11th.

Q. The eleventh—are you sure of that?

A. On the tenth—I am sorry.

Q. The charge was placed against this man on the afternoon of the tenth, the day of the arrest?

[fol. 516] A. Not the charge of robbery. It was placed on the 11th.

Q. What charges were placed against him on the 10th?

A. Investigation.

Mr. Fallon: Mark this for identification, please.

(Whereupon a record was marked Government's Exhibit 41 for identification.)

Q. I show you Government's Exhibit 41 for identification and ask you if you will tell us in a general way what that is?

A. This is the daily memoranda of arrests used by the police department to keep a record of the time that the person is brought, the date, his age, etc., and the charge and the arresting officers and the final disposition.

Q. What does that show relative to the defendant, Frank Coppola?

A. Frank Coppola on January—

Mr. Mahoney: I object to him reading from something not in evidence.

OFFER IN EVIDENCE

Mr. Fallon: I offer this in evidence.

Mr. Mahoney: May I see it, please?

(Mr. Mahoney examines record.)

Mr. Mahoney: I object to the introduction of this on the grounds that it is incompetent, irrelevant, immaterial, not [fol. 517] binding on Mr. Coppola. There has been nothing shown as to this record, who made the notations.

The Court: Is it a record kept in the ordinary course of business?

The Witness: Yes, sir.

The Court: Kept by some police officer in charge? How is that kept?

The Witness: That is a record kept in the detective bureau and that record is written in there by the desk lieutenant or a man assigned back of the desk to take the name, age, address, and so on, of the person brought into the cell block.

The Court: Is it in the regular course of business for the police department to keep such a record?

The Witness: Yes, sir.

The Court: I think I will overrule the objection.

Mr. Mahoney: Respectfully except to the ruling. There are about fifteen or so names on here and we object to the

use of it insofar as any other individual is concerned and if it is not pertinent to Coppola.

[fol. 518] The Court: Yes, we are only trying Coppola in this lawsuit.

Mr. Fallon: We also have the custodian of this record.

Q. Will you explain relative to the defendant, Frank Coppola, what Government's Exhibit 41 shows?

A. It shows on January 10, 1957 at 3:45 P.M. he was booked, gave the address, Frank R. Coppola, 2477 South Avenue, Niagara Falls, New York; date of birth 6-17-33; 23 years old; white; parentage, U.S.; nationality, U.S.; it shows occupation, banana merchant; married; can read and write. Charge is 2124 of the Penal Law.

Q. What is that?

A. Robbery in the first degree.

Q. Does it show the complainant?

A. Yes, sir.

Q. Who was it?

A. Paul Redlinski, 140 Pontiac Street, Buffalo. Then later on, on January 10, 1957 at 4:15 P.M. he again was booked with the same information on a charge of 404 of the Penal Law, burglary in the third degree, felony, on the complaint of Albert Sidell, 21 East Eagle Street, Buffalo.

Q. Did you say you had some conversation with the defendant Coppola about some of these local robberies? Did you conduct any interrogation of him at all that day?

[fol. 519] A. Yes, sir.

Q. What did you interrogate him about, do you recall?

A. Well, the first interrogation was at the time we stopped the automobile.

Q. And that was with reference to what they were going to do that morning?

A. What they were going to do and what was in the automobile that they were riding in.

Q. When did you interrogate him again?

A. Later that afternoon.

Q. About what?

A. About 2:30.

Q. I don't mean the time—about what crimes?

A. Oh, well, at that time the interrogation was about a crime in Niagara Falls, New York.

Q. Who else was present besides Coppola and yourself?

A. There was a State trooper—if I may refer to my notes?

Q. Surely.

A. Charles E. Bukowski. I don't know whether this particular trooper E. Pavlik, was in the room or not. Wait a minute—Sergeant Bukowski and he and I were both interrogating him at that time.

Q. Did you interrogate him about anything else that day?

A. Yes, sir, about other crimes that had happened in the city. Also about some burglary, this burglary of Sidell [fol. 520] on East Eagle Street. I had a further conversation. I asked him where the key was to his home, and he said, "Are you going to search?" And I said, "Do you mind?" And he said, "No, as long as you don't break down the door and disturb anything you may do it." And I said, "Where is the key?" And he explained how to get the key.

Q. Did you interrogate him about any other local robberies?

A. Yes, sir.

Q. What else?

A. The bank holdup at North End, some conversation about that, and the holdup of the Market Bank out on Clinton Street.

Q. Did you interrogate him at all with regard to the Redlinski robbery?

A. There was some conversation, yes, sir. May I say this, as I recall now the information about the Redlinski holdup came from Golombeck to me.

Q. All during this day and into the next day he was in your custody, was he not, State custody?

A. That's right.

Q. Were you getting any orders with regard to him from the Federal authorities at that time?

A. No, sir.

Q. Did there come a time when they requested you to [fol. 521] turn the custody of this man to them so that they could arraign him?

A. Yes, sir.

Q. When was that?

A. That was the morning of the eleventh about 10:00 A.M., they wanted to take him to court with others at eleven o'clock that morning.

Q. What happened with regard to that?

A. I called Mr. Dwyer and informed him what had happened and he told me to wait until I received a call from him, and I waited and he called back and he said, "Bring him over to my office," and I took him over to Mr. Dwyer's office shortly before 11:00 A.M. on the eleventh of January.

Q. What occurred then?

A. Chief Golombeck and I took him over and—

Mr. Mahoney: I object to this as to what occurred there.

Mr. Fallon: I will withdraw the question.

Q. You then went to Mr. Dwyer's office?

A. Yes, sir.

Q. How long was he there?

A. Pardon me?

Q. How long was he in Mr. Dwyer's office?

A. Well, total time of approximately two hours. He [fol. 522] wasn't in with Mr. Dwyer all that time; he was sitting in the library room part of that time.

Q. Then what was done with this defendant after that?

A. He was taken to City Court.

Q. City Court of Buffalo?

A. That's right.

Q. And what was done there?

A. He was charged with robbery.

Q. And he was arraigned in City Court, was he?

A. Yes, sir.

Q. And what was done with him after that?

A. Then he was taken over to this building upstairs and brought before Mr. Henderson. He was taken into the custody of Mr. Henderson.

Q. And it wasn't until that time that the Federal authorities had any custody whatsoever of this man, is that right?

A. That's right.

Q. And, in fact, they endeavored to get him over here to arraign him at eleven that morning and weren't able to do, isn't that so?

Mr. Mahoney: I object to that as a conclusion.
The Court: Overruled.

A. Yes, sir.
[fol. 523] Q. Now, just one further question. You said you didn't question Coppola while the Federal agents were questioning him on the night of January 10th, isn't that right?
A. That's right.
Q. Did you make any effort to?
A. Well, I did come back down to talk to him, but the F. B. I. men were talking to him, and, therefore, we left them talk. We didn't go in.
Q. You didn't go in and tell them you wanted to talk to him and they would have to stop?
A. No, sir.
Q. Is that right?
A. That's right.

Mr. Fallon: That's all.

Recross examination.

By Mr. Mahoney:

Q. Then, do I understand from what you just said you came back to work on the night of January 10, 1957 for the purpose of continuing your interrogation of Coppola, is that right?
A. Continuing the interrogation of him, others, and continuing in the investigation. We had a show-up that night, two show-ups.
Q. Although you came back for that particular purpose you couldn't interrogate him because at that time they were [fol. 524] being questioned by the F. B. I.?

Mr. Fallon: I object to that.
The Court: Sustained.

Q. What was the reason you couldn't interrogate him when you came back to work, inasmuch as that was your purpose in returning?

Mr. Fallon: I object.

The Court: Sustained. He told you that wasn't his entire purpose.

Q. When you came back that particular night to work wasn't it not only to question Coppola and the other two men—

The Court: That is what he told you, to question him and the others and to attend the line-up. You limited it to Coppola in your other question. You don't need to distort it.

Mr. Mahoney: I assure your Honor I had no such intention.

The Court: Take it a little slower so you understand the answers.

Q. You came back, Mr. Klenk, for the purpose of interrogating not only Coppola but Simmons and D'Antuono, is that right?

A. That's right and to conduct a show-up. We had a show-up at about 8:00 P.M. and shortly before ten P.M. that night.

Q. When you say you conducted a show-up, that would be a show-up of Coppola, Simmons and D'Antuono?

[fol. 525] A. And others.

Q. And others?

A. Yes, sir.

Q. You say when you came back for that purpose of interrogating Coppola and these two others you said you weren't able to, or was it the case of you didn't?

A. Well, may I explain, in case there are visiting policemen from other cities or towns or state police or F. B. I., if we have a prisoner and they are talking to them we show them the courtesy of letting them talk to our prisoners, and they were talking to the prisoners, and when I went upstairs as long as they were talking to them I wouldn't step in and tell them that I wanted to talk to them.

Q. As a matter of courtesy?

A. That's right.

Q. Did you go up more than once?

A. Three times, I believe.

Q. And did these three times you went upstairs, did that take place between 9:00 o'clock and 12:30?

A. Yes, sir.

Q. On January 10th?

A. Yes, sir.

Q. You said you had some information on the morning of January 10th, 1957, when you were out in the vicinity of [fol. 526] Babcock and Clinton Streets, is that correct?

A. Yes, sir.

Q. And do you know as to where that information had come from?

A. I couldn't tell you where I received it.

Q. Well, did you receive it from any member of the Federal Bureau of Investigation?

A. No, sir.

Q. Whatever information you received, were you told that it had come from the Federal Bureau of Investigation?

A. I was told that there had been some contact, yes, sir.

Q. With the Federal Bureau of Investigation?

A. Yes, sir.

Q. Were any names mentioned?

A. I don't recall.

Q. Who did you have the conversation with?

A. John Dwyer, the District Attorney of Erie County.

Q. On this police blotter, Mr. Klenk, which is Government's Exhibit 41 in evidence, I noticed that it is headed "Daily Memoranda of Arrests," is that right?

A. Yes, sir.

Q. And I ask you this, do you observe in the first column, which is the date, that the handwriting is different from the very next column where the time is marked? Do you note any difference in the handwriting?

[fol. 527] Mr. Fallon: I will object to that.

The Court: I will accept it if he knows any difference.

A. I would say from the "57" it looks the same as the "4:25." It is the same kind of fives, similar fives.

Q. Do you know at headquarters if this memorandum of arrests, or this particular sheet, is it the policy, or is it the practice at headquarters to record the time that the man is brought into headquarters or at the time that he is taken into court?

A. Generally at the time he is brought into headquarters.

Q. At the time that he is brought into headquarters?

A. Yes, sir.

Q. Well, I notice in this particular situation as to Frank Coppola on 1-10-57 it is 3:45 P.M. relative to the 2124 charge, and I believe three lines below it is Frank Coppola at 4:15 P.M. Would that indicate the occasion he was brought back from conferences at police headquarters, and I mean by that interrogation?

A. No.

Q. It wouldn't?

A. I can explain why that is there.

Q. Why is that there? What is the significance of it?

A. When we arrived at headquarters there was movie photographers and other photographers there and we [fol. 528] immediately took him up to a cell block.

Q. You took who, the photographers?

A. No, the three defendants, to avoid having their picture taken at that time in fairness to them and in fairness to ourselves. We were conducting an investigation and we didn't want the press to get hold of it, so, therefore, we took them upstairs where we thought there was no press around. That was Chief Golombeck's orders.

Q. Then, I take it, that was somewhere near eleven o'clock on that morning, instead of taking him into the detective bureau where this record is kept you took him up to the fourth floor, was it?

A. Yes, sir.

Q. And you took them directly to the cell block?

A. Yes, sir.

Q. And what did you take them up on, an elevator?

A. Yes, sir.

Q. When you got them up to the cell block then there was no record made in the cell block of the arrival of these three men there?

A. Well, I don't know whether there was a cell block record. They must write their names in a—they have another ledger up in the cell block when a prisoner is brought in there.

Q. But, in other words, in this particular case in which [fol. 529] routine wasn't followed, on bringing them to the

third floor of the detective bureau and at least taking their names, they were in your custody?

A. That's right.

Q. Does this time indicate on here under this "Time" column—does that indicate the time that they were brought down from the cell block and officially put on the memorandum of arrests on the afternoon of the same day?

A. Yes.

Q. Then the time in here is an indication as to when they were brought into the—

A. Detective bureau.

Q. —detective bureau?

A. That's right.

Q. And that indicates the time of their arrival at the detective bureau?

A. Yes, sir.

Q. And you say that there would be a record in the cell block that would indicate their arrival at the cell block that morning?

A. I believe there would be, yes, sir.

Q. If that indicates the time they were taken into the detective bureau what about the individual relative to the name of complainant—the nature of the complaint and the name of the complainant, when is that put on?

[fol. 530] A. Well, we finish our investigation when we are—in this particular instance we were investigating the report that there would be a holdup on Clinton Street and we couldn't charge the fellow with that crime; I mean there was no crime committed there so there was some conversation there in the cars, and we stopped the car relative to some things they had in the auto and they were taken downtown for further investigation, as I say, as to what they had with them in their possession.

The Court: What do you mean? What did they have with them?

The Witness: They had a ring of keys for General Motors—I should say each a ring of keys; they had a paper bag with a couple of silk stockings in it, and a hairbrush.

Q. Where was that in the car?

A. That was underneath the driver's seat.

Q. And is that all that was found in the car?

A. Yes, sir.

Q. Well, then, when it comes down to this nature of the complaint, 2124 of the Penal Law which you have testified to and 404 of the Penal Law, when would that be made on this Exhibit 41 of the Government's?

A. I believe that would be made on the eleventh.

Q. On the eleventh of January?

[fol. 531] A. Yes, sir.

Q. And when that charge is placed there—I don't see any column here for time or date comparable to the date column and the time column immediately to the left on the exhibit. There is no repetition of that, is there?

A. No.

Q. And there is no notation appearing on here as to when 2124 and 404 of the Penal Law was put on there?

A. No, sir.

Q. And, Lieutenant Klenk, is this south and east side squads, and is this "arson" (indicating)?

A. Arson squad and Joe McCarthy squad.

Q. And Chief Golombeck and Chief Swanekamp are on here, right?

A. Yes.

Q. What would that indicate, that they were officers that worked on these people, Coppola and Simmons and D'Antuono, when they were brought in?

A. Not necessarily. There was a detail, as I recall, of five different taverns which had—well, one of them had two men in and the other had one man in where this suspected holdup was going to be, and as I recall, Swanekamp had something to do with the lining up the men to go to these different places.

Q. I just want to ask you this last question, Lieutenant [fol. 532] Klenk. The time that is indicated here in the left hand column opposite the name of "Frank Coppola," on this line here, which is opposite the "2124" and of Frank Coppola at 4:15 P.M., that time there does not indicate the time at which these charges under the column "Nature of Complaint" was made?

A. That's right.

Mr. Mahoney: That's all, your Honor.
The Court: Anything else of this witness?
Mr. Fallon: I don't believe so, your Honor.
The Court: That's all.

JOHN C. GOLOMBECK, being first duly sworn on oath, was examined and testified as follows:

Cross examination.

By Mr. Mahoney:

Q. Chief, you are the Chief of Detectives of the Buffalo, New York, Police Department?
A. Yes, sir.
Q. And have been for the last three and a half years or thereabouts?
A. Three and one-half years.
Q. And you have been in the department for a long period of time?
[fol. 533] A. Thirty-three and one-half years.
Q. And you are under subpoena secured by my office and served on you this morning, isn't that so?
A. I am.
Q. Do you know that the last witness, Lieutenant Klenk of the Homicide Squad, was also under subpoena?
A. Yes, sir; he showed me the subpoena.
Q. Was it comparable to the one that was served on you?
A. Something like it.
Q. On January 10 of 1957 were you in an automobile in the vicinity of Babcock and Clinton Streets in Buffalo, New York?
A. I was.
Q. And was that at or about 9:30 or 10:00 o'clock in the morning?
A. I was there earlier than that.
Q. When you say "earlier" were you there alone?
A. No, sir, I was there with Lieutenant Klenk.
Q. Did there come a time prior to that that you had received some information?
A. There was.

Q. And where did you receive that from?

A. I received some information on January 7th.

Q. On January 7 of 1957, is that right?

A. Right, on a Monday.

[fol. 534] Q. And where did you receive that information from?

A. I received that information from John Roche.

Q. And at that time John Roche was the titular head of the F. B. I. in Buffalo, New York, is that right?

A. He was.

Q. And did you have any further contact with Mr. Roche between January 7th and the morning of January 10th, 1957?

A. I did.

Q. And when did that occur, Chief?

A. January 7th, later in the day.

Q. A second time on January 7th, 1957, is that right?

A. Right.

Q. And then any further contact before the tenth?

A. I am pretty sure there was, yes.

Q. Could you recall the date?

A. I think it was on Wednesday.

Q. That would be two days—

A. The ninth.

Q. That would be the ninth of January, right?

A. Right.

Q. On the tenth of January, 1957 I understand you and Lieutenant Klenk and—is it Mr. Segit—is that the correct pronunciation?

A. Segit—and he is no nephew of mine.

Q. Is he related to you?

[fol. 535] A. No.

Q. He was in the car with you, is that right?

A. Yes. Can I explain how he happened to be in the car?

The Court: Yes, briefly.

The Witness: Well, I had men detailed to several places, taverns, where they cash a number of or a large amount of paychecks, and one of the places that he was detailed to was closed so in our driving around we saw him walking around street, so we picked him up and put him in the car.

Q. Was he armed with a shotgun?

A. He was.

Q. And you carried the regular equipment, a thirty-eight police positive revolver?

A. Right.

Q. And Lieutenant Klenk, you knew he had the same accouterment or equipment on him?

A. Right.

Q. Did there come a time when you gave a command to an automobile to pull over?

A. There was.

Q. And was that the automobile that eventually you found Mr. Coppola, Simmons and D'Antuono in?

A. That's right.

Q. And at the time you gave the command to pull over [fol. 536] had there been any crime committed in your presence?

A. Not up to that time.

Q. In other words, then, you pulled them over on suspicion, is that right?

A. Well, yes.

Q. Now, they were taken to police headquarters, the three of them?

A. They were.

Q. And isn't it a fact that at police headquarters in order to circumvent the press and pictures being taken they were put on the elevator and taken to the fourth floor and put directly in a cell block?

A. That's right.

Q. And they were kept in the cell block until you were ready for interrogation of them?

A. That's right, later that afternoon, yes.

Q. When you got to police headquarters on the morning of January 10, 1957, did you contact the F. B. I. or did you contact Mr. Roche?

A. I don't recall that I did right then or not. I did later on.

Q. Later on that day?

A. Right.

Q. Have you any recollection as to when you contacted them?

A. I don't recall the time, Mr. Mahoney.

[fol. 537] Q. Did you contact him in regard—

A. There was a big turmoil there, all the photographers and T.V. cameras and a lot of excitement.

Q. And where did that take place with the photographers and the T.V. cameras—was that at police headquarters?

A. All over the building.

Q. All over? Let me fix it, if I may. Did it occur in the cell block?

A. No, they are not allowed in the cell block.

Q. Did it occur at the detective bureau?

A. They were in all the hallways, and as we brought them in, in front of the elevator.

Q. Would that be the hallway on the third floor?

A. Well, they start right from the first floor.

Q. In other words, there was a display of T.V. cameras and photographers on the first floor?

A. Yes, we were coming in from the entrance.

Q. Would that be on the second floor?

A. First floor.

Q. First floor? Were they on the third floor?

A. They were on the third floor. That is the reason I took them right up to the fourth floor.

Q. And have you any recollection—you said that you called Mr. Roche later and that was in answer to my question that you didn't know if you called him after you [fol. 538] immediately got back to headquarters. Do you know what time you did call Mr. Roche?

A. I don't recall.

Q. After you called Mr. Roche did you see Mr. Roche or any of the F. B. I. go in headquarters?

A. I didn't see Mr. Roche; I saw several of the F. B. I. men.

Q. Was that in the afternoon?

A. That was in the afternoon.

Q. Would you have any recollection as to time?

A. I don't remember.

Q. You don't remember? Were you at police headquarters on the night of January 10th of 1957?

A. On the 9th?

Q. On the night of January 10th, 1957?

A. I was.

Q. Did you see a number of F. B. I. agents there at that time?

A. I did.

Q. Was one of them Mr. Roche?

A. I don't think Mr. Roche was there then.

Q. Would you know approximately how many members of the F. B. I. you saw at headquarters on the night of January 10th, 1957?

A. I wouldn't dare to venture a guess, Mr. Mahoney.

Q. When you brought these men into police headquarters, [fol. 539] particularly Coppola, did you place any charge against them?

A. Placed a charge that afternoon.

Q. What?

A. On the 10th, afternoon of the tenth of January.

Q. You did?

A. Yes, sir.

Q. And do you know when you placed that?

A. Oh, it was around 3:30, four o'clock.

Q. That you did place a charge against Coppola?

A. Right.

Q. You personally?

A. Right.

Q. Is that right?

A. Right.

Q. At that particular time you had no warrant for his arrest, did you?

A. No, I just had an identification of his picture from Mr. Redlinski in the robbery that took place about a week before that.

Q. But you had no warrant for his arrest?

A. No, sir.

Q. Did you make a notation as to the time you placed the charge?

A. No, I don't do that because it is on the records.

[fol. 540] Q. You didn't make any notation as to time, did you?

A. No, sir.

Q. None at all?

A. I know it was around four o'clock because my regular desk lieutenants were tied up taking statements, and the

relief man come in maybe ten or fifteen minutes ahead of time so I pressed him into service right away.

Q. And by your "relief man" who are you referring to?

A. Jerry Lide.

Q. Do you recall definitely that it was?

A. I am pretty sure.

Q. And that is the hour you generally leave headquarters in the day, isn't it, about four o'clock, four thirty?

A. No, about four to five o'clock, and then in a case like this I don't leave maybe until the next day.

Q. As a matter of fact, you left that night, the night of January 10th?

A. Yes, I went to get a bite to eat, because I worked from the ninth—

Q. You went to get a bite to eat and when you came back to headquarters you also found as a matter of courtesy you couldn't interrupt the F. B. I. in their questioning, isn't that right?

A. That's right.

Q. And, as a matter of fact, were you there as late as [fol. 541] twelve thirty that night?

A. Yes, sir.

Q. And then you left, did you not?

A. No.

Q. Didn't you leave with Lieutenant Klenk and the other men that were waiting around there for further interrogation?

A. No.

Q. Is it your contention you worked all that night?

A. I think I worked until two-thirty or three o'clock; pretty late when I got home.

Q. When these men were brought in at 10:00 o'clock or 11:00 in the morning, whatever it was, you put no charge against Coppola, did you?

A. No, sir.

Q. What were you holding him on at that time, on suspicion?

A. To get complainants to come in and identify him.

Q. You were holding him on suspicion, weren't you?

A. That's right.

Q. You had no warrant?

A. That's right.

Q. And you didn't make any entry yourself on this Exhibit 41 that is now in evidence?

A. I don't do that.

Q. You don't do that?

[fol. 542] A. No.

Q. And you weren't present at the time it was entered?

A. I could have been but I was busy.

Q. You don't recall? You were concerned with the investigation, weren't you, that was being conducted?

A. Yes, but between the telephone calls and other people coming and going I couldn't just confine myself to this one case.

Q. So if the time that appears on there is the time the men were brought down from the cell block where you had taken them to circumvent reporters and photographers, if that represents the time that they were brought into the detective bureau, you wouldn't know, would you?

A. I don't understand your question.

Q. As to the entry of time that is on this Exhibit 41 that is in evidence which designates the time in the second column, as to whether or not that was placed there at the time that they were brought down from the cell block and brought into the detective bureau, you wouldn't know that?

A. It must have been the time. They generally mark the time in the book.

Q. Not what they generally do. In this particular case we have testimony here to the effect that that is the time they were brought from the cell block into the detective [fol. 543] bureau.

A. Well, then, it must be so.

Q. I want to know if you have any personal knowledge to the contrary.

Mr. Fallon: I object to that.

The Court: Sustained. He gave you an answer when you were half way through and you wouldn't pay any attention and you went on to your next question. Sustained.

Mr. Mahoney: Respectfully except to the Court's ruling. That's all, your Honor. You may ask, Mr. Fallon.

Direct examination.

By Mr. Fallon:

Q. You say you had some conversation with Mr. Roche prior to January 10, 1957, is that correct?

A. That's right.

Q. As a result of these conversations, did you receive some information relative to some felonies that had been committed or at least a felony that had been committed in the City of Buffalo?

A. I did.

Q. Was that the robbery of Paul Redlinski?

A. One of them was.

Q. The information he gave you was to the effect that this [fol. 544] defendant, Frank Coppola, and others were involved in the commission of that felony?

A. That's right.

Q. And as a police officer you are familiar with the fact that you can make an arrest without a warrant where a felony has been committed, isn't that right?

A. That's right.

Mr. Mahoney: I object to that. It calls for a conclusion.

The Court: Overruled.

Q. You had some information this defendant, Frank Coppola, had committed the robbery of Paul Redlinski?

A. I had him identified.

Q. You had him identified prior to January 10th by Paul Redlinski?

A. Not from Paul Redlinski, from a photograph.

Q. Paul Redlinski saw a photo of Frank Coppola prior to this arrest on January 10th?

A. That's right.

Q. This information you received from Mr. Roche, was that relative to the robbery that you believed was intended to be committed on that morning?

A. That's right.

Mr. Mahoney: I object to what his belief was.

The Court: Overruled.

[fol. 545] Mr. Mahoney: Respectfully except.

Q. Did you receive any instructions from Mr. Roche to the effect he wanted you to make an arrest?

A. I did not.

Q. It was a matter then, was it, of giving you information?

A. He gave me the information concerning Redlinski's holdup or robbery and the robbery that was to take place January 10th.

Q. And the decision to finally make the arrest of these men, whose was that?

A. Mine; my own.

Q. Now, this defendant, then, was taken back to police headquarters, was he not?

A. Right.

Q. After you had picked him up?

A. Right.

Q. Was he in your custody all that day? That is, as between the State and Federal authorities, whose custody was he in?

A. He was in my custody charged with Redlinski's and another burglary he told me about that day committed in December.

Q. Now, when, for the first time were the Federal authorities given the opportunity to arraign this defendant?

A. On the eleventh.

Q. About what time?

[fol. 546] A. That was quite late afternoon, four, four-thirty.

Q. Do you know whether or not they endeavored to get this man over here for arraignment prior to that time?

A. I don't know that.

Q. But in any event the custody of the defendant was not turned over to the Federal authorities for arraignment until the time you have just mentioned, four-thirty o'clock January 11th?

A. On the 11th about 11:00 A.M. we were told by Dwyer to bring the three defendants to his office. That is the County District Attorney, Mr. John T. Dwyer.

Q. How long was he kept there?

A. Well, they were there about, until three o'clock or so.

Q. Well, he was taken over to City Court to be arraigned, was he not?

A. After he made statements there.

Q. After he had talked to Dwyer?

A. That's right.

Q. When was he finally brought over to the Federal authorities for arraignment?

A. That was between, I will say between four and five.

Mr. Fallon: No further questions.

Recross examination.

By Mr. Mahoney:

Q. Mr. Golombeck, you said at no time were you re- [fol. 547] quested by Mr. Roche or at no time did you take any instructions from Mr. Roche relative to Coppola. If that is so, what was the necessity of your calling Mr. Roche on January 10, 1957 after you had Coppola in custody?

A. To let him know I apprehended the three.

Q. Was there any reason why you should report the arrests to him, or rather that you had the man in custody?

A. It was a courtesy extended to him for supplying me with the information.

Q. And is that the courtesy and cooperation that exists between the Buffalo Police Department and the Federal Bureau of Investigation?

A. That's right. We work hand in hand with them and the Sheriff's office.

Mr. Mahoney: That's all, your Honor.

Elmer F. Moulin being duly sworn on oath, was examined and testified as follows:

Cross examination.

By Mr. Mahoney:

Q. Mr. Moulin, on January 10th of 1957 you were a member of the Federal Bureau of Investigation?

A. That is correct.

Q. And on that particular day were you in police head-
[fol. 548] quarters in the City of Buffalo, New York?

A. I was.

Q. And do you recall approximately the time that you went there?

A. Yes, it was just prior to 8:00 P.M. on January 10th.

Q. Had you been at Police Headquarters prior to that day?

A. No, I hadn't.

Q. At that particular time were you accompanied by another agent?

A. I was.

Q. And who was that?

A. Frank Jenkins.

Q. And while you were at police headquarters were you in various parts of the building, such as the show-up room, the detective bureau and the cell block?

A. Yes, I was in all three places.

Q. The cell block is on the fourth floor, is it not?

A. Yes.

Q. And the show-up room—

A. Is on the fourth floor.

Q. And the detective bureau is on the third?

A. Third floor.

Q. Now, in addition to your being with Mr. Jenkins, did you see other members of the Federal Bureau of Investigation at police headquarters?

[fol. 549] A. I did.

Q. At that time? And how much time did you spend at police headquarters that particular night?

A. We arrived prior to 8:00 o'clock and we left at approximately midnight.

Q. At midnight?

A. That is correct.

Q. And you said you arrived just prior to eight o'clock?

A. Prior to eight o'clock.

Q. And as soon as you arrived did you go to the show-up room over there?

A. No; I stopped in the detective bureau.

Q. And from there where did you go?

A. I went up to the showup room.

Q. From the showup room did you go to the cell block?

A. Later on we were—we had to interview Dario D'Antuono.

Q. And what part of the cell block did you use up there in that interview?

A. I was opposite the main cell block.

Q. Is that the room where they take your fingerprints?

A. Yes, sir, for fingerprinting.

Q. And that is barred, is it not?

A. It is barred.

Q. And would you say that you were in that room from approximately nine until midnight?

[fol. 550] A. From approximately a little before nine until about midnight.

Q. Until midnight? And while you were in there did you see—Jenkins was in with you, was he not?

A. That is correct.

Q. Did you also see Messrs. Eddy and Jenson?

A. Yes.

Q. Did you also see Obuhanick?

A. Prior to going into the cell block I had seen Mr. Obuhanick.

Q. Did you see Obuhanick in the cell block at all during the three hours that you were there?

A. No, I don't recall seeing him. He was in another room.

Q. Did you see Frank Liddy there?

A. Yes, I did.

Q. And did you see John Roche there?

A. Yes, I did.

Q. And were they, during the time that you were there between nine and twelve, were they moving in and out of the cell block and out in the corridor at various times?

A. No, I saw Mr. Roche when he came into the room when we were interviewing D'Antuono, and then he left, and that was the last I seen him.

Q. What about the other members of the F. B. I.?

A. Frank Liddy, I had seen him come into the cell block [fol. 551] after we had gone into the cell block to interview D'Antuono.

Mr. Mahoney: That's all. You may ask.

Direct examination.

By Mr. Fallon:

Q. What cell block did you see him go into, a different one?

A. No, it is all one room up there, the main cell block, but you have to come through one door and the rooms are adjacent to the cell block.

Q. Well, Mr. Liddy, where was he located?

A. He was in the room.

Q. In the room?

A. Off of the corridor of the cell block which leads to the polygraph room.

Q. I think the point Mr. Mahoney is driving at, these agents that were interrogating the various people that had been picked up, were they moving around from room to room, or did they stay in the room?

A. They took their prisoner in the room and stayed.

Q. And stayed there?

A. That's right.

JURY RECESSED

The Court: We will recess until 1:45.

(Whereupon the luncheon recess was taken, and at 1:45 P.M. the following proceedings were had in the absence of the jury:)

[fol. 552] Mr. Mahoney: We rest, your Honor, on that proof.

Mr. Fallon: Your Honor, I do not believe there is any need for additional proof. However, I do have available Mr. John Roche who has full knowledge of the facts with regard to these transactions, and I thought with the idea of having a full hearing on this thing it might be well to call him.

JOHN A. ROCHE being first duly sworn on oath, was examined and testified as follows:

Direct examination.

By Mr. Fallon:

Q. Mr. Roche, what is your occupation?

A. I am special agent in charge of the F. B. I. of the Richmond office.

Q. How long have you been with the F. B. I.?

A. Twenty-one years.

Q. Was there a time when you were special agent in charge of the F. B. I. in the City of Buffalo, New York?

A. Yes, there was.

Q. And when was that?

A. That was from 1953—1954 to 1957.

[fol. 553] Q. What time in 1957 did your duties in this city terminate?

A. On the 29th of March.

Q. Therefore, you were special agent in charge during the month of January of 1957 and prior thereto?

A. That is correct.

Q. Did there come a time in January when you contacted any local authorities with regard to the defendant, Frank Coppola?

A. Yes, there did.

Q. And with regard to others as well?

A. That is correct, I did.

Q. Will you tell the Court what contact you had with the local authorities? First of all, when was your first contact and with whom?

A. My first contact—let me clarify your question. The first contact at any time with reference to Frank R. Coppola?

Q. With reference to matters leading up to his arrest on January 10th?

A. That was on January 7th, at which time I contacted Chief of Detectives John Golombeck.

Q. At that time did you give him certain information?

A. Yes. On that occasion I informed Chief Golombeck—

Mr. Mahoney: I object to that. I object to anything further; it has been answered.

[fol. 554] The Court: All right. Next question.

Q. What information did you give him at that time?

A. On that occasion I informed Chief Golombeck that we had received information indicating that one Paul, last name unknown, a butcher, had been robbed on the night of January 4th by Coppola, D'Antuono and Simmons. I relayed to him the information concerning the set-up and asked him if he could identify the party that was held up or if, in fact, he did have such a hold-up on his books. He informed me the information dealt with one Paul Redlinski, who had been the subject of a hold-up on January 4th. I furnished him with phot. graphs of these three individuals. I furnished him with photographs of these three individuals, and on the following day the photographs were presented to Mr. Redlinski and he identified Coppola.

Mr. Mahoney: This is objected to. I object to that and ask to have it stricken out.

The Court: I think I can clarify that. Were you present at that time?

The Witness: I was.

The Court: Overruled.

Mr. Mahoney: Respectfully except.

Q. What is the next contact you had with the Buffalo police with regard to these matters leading up to the arrest [fol. 555] of Coppola on January 10th?

A. On January 9th when I again contacted Chief Golombeck I informed him we had received information these three individuals contemplated a hold-up in East Buffalo.

Q. Did you tell him when this hold-up was contemplated?

A. Yes, I told him that the contemplated hold-up was to occur at 10:00 A.M. on January 10th; from information developed I informed him it could be possibly the El Chico Tavern on Clinton Street.

Q. That is the information you gave Golombeck on the 9th?

A. That is correct.

Q. What is the next contact you had with the local authorities in regard to this matter?

A. On the morning of January 10th at about 11:00 o'clock or shortly thereafter Chief Golombeck called me and told me they had arrested Coppola, D'Antuono and Simmons in the vicinity of the El Chico and that they were then on their way to police headquarters with them.

Q. Prior to that time to January 10th did you have any contact with Mr. Dwyer, the District Attorney, with regard to these matters?

A. Yes, I did. I contacted Mr. Dwyer on January 9th immediately after leaving Chief Golombeck's office, and I informed Mr. Dwyer of the same information.

Q. Did you inform Mr. Dwyer with regard to the fact [fol. 556] that Frank Coppola was a suspect in certain bank robbery cases as well?

A. That I did. I informed Mr. Dwyer, informed him that we had—

Mr. Mahoney: Just a moment. He has answered the question and I object to anything further.

The Court: All right, what did you tell him?

The Witness: I told Mr. Dwyer we had been investigating Coppola in connection with the M. & T. bank robbery, the Liberty Bank robbery and a contemplated bank robbery of the Marine Trust at Seneca and Emslie.

Q. Did you tell him what the purpose of your visit—what was your discussion with regard to why you came to him at that time?

A. I informed Mr. Dwyer that in view of the information we had received of a contemplated hold-up in the City of Buffalo the following morning that we felt obligated to furnish him with this information so that he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up.

Q. You said on January 10th you were informed by Chief Golombeck with regard to the fact that these men had been picked up. Did you go to the police station at all that [fol. 557] day?

A. I did.

Q. What time did you go?

A. I went over to police headquarters shortly before noon.

Q. Who did you see at that time?

A. I saw Chief Golombeck and John Dwyer and Lieutenant Harry Klenk.

Q. Did you see the defendant, Coppola, at all at that time?

A. Not at that time, no, sir.

Q. Did there come a time when you did see the defendant, Coppola, on that day?

A. Yes, I saw the defendant, Coppola, about 3:30 that afternoon.

Q. And where was that?

A. Up in the cell block up at the top of police headquarters.

Q. Who else was present besides Coppola and yourself?

A. John Dwyer, the district attorney.

Q. Did you have any conversation with Coppola at that time?

A. Yes. Mr. Dwyer and I went in to talk to Mr. Coppola and Mr. Dwyer explained who he was and who I was, and he then explained it to him he was interested in Coppola in connection with a series of various crimes. He specifically began to question Coppola about the Redlinski stick-up out on Pontiac Street.

Q. What did you do or say?

[fol. 558] A. After the conversation had gone on for a certain period of time I interjected and asked Coppola about the M. & T. bank robbery. My reason for doing that—

Mr. Mahoney: I object to that.

The Court: What did you say about it?

The Witness: I asked Coppola if he had any objection to us searching his home in Niagara Falls and Coppola said he didn't. I then explained to Coppola that we had a form which we utilize in the F. B. I. known as a permit to search and asked him if he would have any objection to signing such a form and he said no. I left Mr. Dwyer with Coppola and proceeded out to use the phone and I called the office and had them send me one of the forms. I then returned to Coppola's presence and presented him with the form and he then declined to sign it, stating he would prefer we didn't search his place.

Mr. Mahoney: Preferred what?

The Witness: That we didn't search his place.

Q. Did there come a time later in the day when you assigned certain agents to interview these men who had been picked up?

A. Yes, I did.

Q. And when was that?

A. That was shortly before nine o'clock on the night of [fol. 559] January 10th.

Q. Who did you assign to interview?

A. I assigned Special Agents Gordon Eddy and Omar Jenson to interview Coppola.

Q. You also assigned other agents to interview the other men?

A. I did.

Q. Who did you assign to interview the others?

A. I assigned Elmer Moulin and Frank Jenkins to interview D'Antuono, and I assigned Nicholas Obuhanick and Frank J. Liddy to interview Simmons.

Q. Did there come a time that evening when you saw the defendant, Frank Coppola, again?

A. Yes, true.

Q. And when was that?

A. That was shortly after eleven o'clock that night.

Q. When you went in to see him was he being interviewed at that time?

A. Yes, he was then being interviewed by Eddy and Jenson.

Q. When you went there did you have any conversation at all with Coppola?

A. My only conversation with Coppola at that time was a statement to the effect that, "Frank, don't you feel better now that you have got it off your chest?"

The Court: What did he say?

[fol. 560] The Witness: He said he did.

Q. Did he say anything to you with regard to his wife and mother at that time?

A. His wife and mother?

Q. Yes.

A. No.

Q. Didn't mention them at all?

A. No, sir.

Q. Do you know of your own knowledge when the Federal warrant was first sworn out?

A. Well, all I can say to that is, I sent an agent over at ten o'clock on the morning of the eleventh to file the complaint and obtain the warrant.

Q. Was there an arraignment scheduled that morning?

A. There was, for eleven, before Commissioner Butterfield.

Q. Was he arraigned at eleven o'clock?

A. No, he wasn't.

Q. Do you know the reason for that?

A. Yes.

Q. What is it?

A. Chief Golombeck—I informed Chief Golombeck he was to arrange to have the prisoner brought over to the Commissioner's office at eleven o'clock, and he informed me that he would take care of the matter. About 12:30 the prisoners had not been brought before the United States [fol. 561] Commissioner. I endeavored to reach Golombeck or somebody at police headquarters to determine why the delay, and they informed me that all of the prisoners were over with John Dwyer, in the District Attorney's office. I then went over there and talked to Mr. Dwyer and we were informed they had not at that time arraigned them on the State charges and they were then arranging to do so.

Q. Subsequent to that time they were turned over to the Federal authorities for the purpose of arraignment, that afternoon, is that right?

A. Yes, they were subsequently turned over to Federal authorities around four o'clock and were arraigned before Commissioner Butterfield.

Mr. Fallon: No further questions.

Cross examination.

By Mr. Mahoney:

Q. Since February 15, 1956 and up to and including January 7, 1957 you and the agents under you in the Buffalo office of the F. B. I. were investigating this M. & T. hold-up at Clinton and Bailey, were you not?

A. That is correct.

Q. And you had been steadily investigating that all that period of time?

A. Correct.

Q. And during the investigation you had cooperated more [fol. 562] or less with the local authorities and they with you?

A. That is correct.

Q. When I say "cooperated" any information that would come into your possesion you would relay to them to get some assistance if they could dig up anything on it, and likewise the reverse was true, isn't that so?

A. Well, we worked very closely with the detective bureau of the Buffalo police department and we worked the case mutually.

Q. And you work very closely?

The Court: What are you saying?

The Witness: But we did not ask them to dig up information for us.

Q. You worked very closely with the Buffalo office of the police department in this particular investigation of the M. & T. hold-up on March 15, 1956?

A. That is correct.

Q. And on various occasions you had contacted them for certain kinds of assistance relative to the solving of it, isn't that so?

A. Can you particularize that? In what way did we?

Q. Well, you said you did work with the detective bureau of the Buffalo Police Department relative to the incident of February 15, 1956 at the M. & T. Bank?

A. That's right.

[fol. 563] Q. And that would be contacting them for the purpose of carrying out some directions that you had given them or an inquiry you might make of them?

A. Well, I can hardly say we directed the Buffalo Police Department.

Q. Or requested them?

A. Or requested them to do so.

Q. What was the type of your contact, then?

A. If we had any information we wanted to work on mutually we would work with the detectives and we would assign a detective and an agent together to work it out.

Q. And that was done relative to the M. & T. stickup, was it not?

A. Correct.

Q. Now, you say on January 10th that Golombeck called you and said they had arrested the defendant and two others and that they were on their way to police headquarters, is that correct?

A. Yes.

Q. So that you got a call from Golombeck outside of police headquarters on that morning of January 10th, 1957?

A. I would assume it came from outside of police headquarters.

Q. Isn't that what you testified to, they were on their way to Police headquarters?

[fol. 564] A. That's what he said.

Q. And then on that particular day of January 10th, and sometime before noon, is that your best recollection as to the time that you went over to police headquarters?

A. Yes, it was just prior to noon because we three went to lunch together.

Q. When you say you three, do you refer to Golombeck, Dwyer, Klenk and yourself.

A. Pardon me, four, yes.

Q. And at that particular time you went over to give further information or to render some assistance, did you?

A. Well, I went over there to find out what had occurred.

Q. To find out from the police depart' nt what had occurred?

A. That is correct.

Q. Is that right?

A. Yes.

Q. And to ascertain as to whether or not anything had occurred relative to the M. & T. or the Liberty Bank or the Seneca-Emslie of the Marine Trust?

A. I would say yes.

Q. And was that in order to find out if anything had occurred—of course, that necessitated some information on your part from Golombeck or Klenk, the two police officers?

A. I don't recall discussing that particular situation with [fol. 565] anybody but Dwyer after we had talked to Frank Coppola.

Q. Well, you just said shortly before noon when you went over that you went over there to ascertain if anything had occurred?

A. That is correct.

Q. And that was relative to these three matters your department under you was investigating?

A. That's right.

Q. So that necessitated your making inquiries if anything had been said or done about those investigations?

A. Yes, that is correct.

Q. Concerning the bank stick-ups?

A. Yes.

Q. And you found out nothing had occurred?

A. I found out they hadn't been questioned up to that moment.

Q. And then after you went to lunch I suppose you came back to your own office in this building?

A. No, I went directly back to police headquarters.

Q. Was that approximately sometime before three-thirty?

A. Yes, sir, that was about two-thirty.

Q. And at that particular time were you with Mr. Dwyer?

A. I was.

Q. And at that particular time you personally asked him about his implication in the M. & T. stick-up on February [fol. 566] 15, 1956, did you not?

A. I asked that of Frank Coppola.

Q. That is what I said. And in connection with that, that

was when that conversation occurred about whether or not he would allow a search of his home?

A. That is correct.

Q. And after the acquiescence and the necessity for the form and the form arriving, why, when he declined to sign it you then left him?

A. That is correct.

Q. As to what occurred between nine and approximately eleven o'clock, shortly after eleven between Eddy and the other F. B. I. agent you had assigned to interview Coppola you would have no knowledge of that, would you?

A. From nine P. M. to eleven P. M.?

Q. Yes.

A. No.

Q. I am talking about knowledge, right?

A. That's right. It was shortly after eleven o'clock I received information that Coppola had confessed to these various crimes to the two agents, and that was my reason for going in there.

Q. You got that from Eddy or Jenson, didn't you?

A. Right

Q. On the morning of January 10, 1957, were you ex- [fol. 567] pecting a call from Golombeck at the time you got it?

A. No, not necessarily.

Q. Well, you say "not necessarily." Because of this working arrangement between the detective bureau—and you knew he was chief of detectives, didn't you?

A. Naturally.

Q. Because of this working arrangement between the detective bureau and the Buffalo police department and yourself were you anticipating a call if anything developed on the morning of January 10th?

Mr. Fallon: I object to the use of the words, "working arrangement."

The Court: Counsel uses the words "working arrangement" and then argues if the witness says yes. Sustained.

Mr. Mahoney: Respectfully except.

Q. Were you anticipating a call from Golombeck that morning or shortly after that hour that you got it?

A. I thought that he would call me if anything had developed, yes.

Mr. Mahoney: That's all.

Redirect examination.

By Mr. Fallon:

Q. Mr. Roche, with regard to this information you supplied to the Buffalo police department, it had to do, as far [fol. 568] as you know, strictly with local crime, did it not?

A. Yes, sir.

Q. They weren't Federal matters at all?

A. No.

Q. You had no agents present at the time of the arrest, is that correct?

A. No.

Q. And you didn't request the Buffalo police to do anything, did you?

A. I didn't.

Q. You gave them the information?

A. That is correct.

Mr. Fallon: No further questions.

The Court: Anything else?

Mr. Fallon: That's all.

Colloquy Between Court and Counsel

The Court: Evidence closed on this phase. If you have any motions I will hear you now.

Mr. Mahoney: That motion is pending before you that I made at the time that that question was propounded to Mr. Eddy, if you will recall, and at that time I made the request for this examination and the Court granted it.

The Court: You had better repeat any motions you had. I don't remember any particular motion that was pending at that time.

[fol. 569] Mr. Mahoney: If you will recall, at that time, your Honor, I objected to the interrogation on the part of the District Attorney of the witness Eddy who was on the stand, and stated at that particular time that it was the

contention of and a move on behalf of the defendant to exclude that testimony because of its incompetency as having been—I didn't go to this extent before.

The Court: I understand you moved for the opportunity to present evidence and I granted the motion and I think it is disposed of. If there is any motion you had better renew it for the record.

Mr. Mahoney: I am moving at this time, your Honor, for the declaration that the testimony of Eddy relative to any conversation that he had with Frank Coppola in police headquarters on the evening of January 10th, 1957 from 9:00 P. M. on that date to approximately 12:54 A. M. on the morning of January 11, 1957 and any written statements that may have been taken in conjunction therewith be excluded, first on the ground that the statements as taken were not free and voluntary on the part of the defendant, Coppola, and that he had been subjected to this interrogation throughout the hours of 10:00 A. M. on January 10th to 12:54 A. M. on January 11th, 1957; and on the further [fol. 570] grounds that the interrogation that took place at that particular time by officers Eddy and Jenson were in violation of the McNabb rule subsequently upheld by the Upshaw case; and also the dicta in the Carignan case. Now, in addition to those specific cases may I say—

The Court: That means an unreasonable delay in arraignment.

Mr. Mahoney: An unreasonable delay, and in violation of Rule 5 of Criminal Procedure; and the case I would like to submit to the Court—I should say at the outset this is one of the matters submitted yesterday by the United States Attorney and I think you are very familiar with it, is *The United States* vs. *Leviton*, and I have had an opportunity through the night to read both Justices Clark as well as the dissent by Justice Frank—and just candidly I would say to the Court that the reason given in that particular situation seems to be that of Justice Frank, although it was the dissent and the minority. However, getting down specifically to cases, a contention as been raised by the District Attorney not only at the time that I made the objections here yesterday, but also during the presentation of this evidence before you, and that is to the effect

[fol. 571] that the defendant was in the custody of the Buffalo police department and, therefore, that the members of the F. B. I. or any Federal authority cannot be penalized because of that particular incarceration by the police authority. I know the Court is thoroughly familiar with *Anderson* against the *United States*, 318 U. S. 350, and in that particular situation I would like to call this to your attention, that in that situation there was an apprehension by the Sheriff of the County wherein these dynamitings had occurred allegedly by members of a union that was on trial—

The Court: I don't like to interrupt, but why not get down to what your contention here is in this case? Then we can discuss the law.

Mr. Mahoney: My contention in this particular case is this: that here was an individual from the proof that has been submitted here that had not had any food or drink throughout the entire day with the exception of a sandwich that had been brought in to him as a result of a request that he made—you are familiar with that proof—and this is a period from ten o'clock in the morning until one o'clock the following morning, or a matter of thirteen hours. In addition to it you have the physical situation existent of [fol. 572] the police officers that were interrogating him, that were bringing him into line-ups, that were taking him down to the Detective Bureau, that were also interrogating upstairs. And also you have now, through Mr. Roche, the fact that on these occasions on January 10th that he was over with the district attorney conferring with the defendant and interrogating him all this period of time. This would seem to indicate that these interrogations and show-ups continued incessantly from ten A. M. until nine P. M. when the F. B. I. agents took this man into an office off the cell block at police headquarters. In addition to this you have this testimony in here that the man wasn't arraigned until four P. M. the following day. You have got conflicting testimony in here between officers Klenk and Golombeck. Golombeck says as to Exhibit 41 that it has a certain significance although he didn't put the time on it. You have got the statement from Lieutenant Klenk, who is in charge of the Homicide Squad and was cooperating with the

Federal authorities, to the effect that the time represented the time that they were brought down from the cell block or from the show-up room into the Detective Bureau of the Buffalo Police Department, and that it is the policy or the [fol. 573] procedure over at headquarters to put a charge against these men at the time they are ready for arraignment—that was ten minutes to one or one o'clock on January 11 of 1957.

Now, I can readily appreciate that the time that we are concerned with in here, your Honor, as to the arraignment, because of this cooperation between the Federal Bureau of Investigation and the Buffalo Police Department, that it was incumbent to arraign prior to 9:00 P. M. or at least 12:54 A. M. on the following morning. The practicalities I certainly can appreciate, that probably after six or seven o'clock at night there isn't a Commissioner available for arraignment, but there was a U. S. Commissioner in the City of Buffalo available throughout January 10th of 1957, and there was no attempt made by the F. B. I. to arraign whatsoever until approximately ten or eleven o'clock the following morning.

The Court: Didn't they arraign him within an hour or within minutes from the time they received his custody?

Mr. Mahoney: In connection with the—

The Court: Isn't that a fact? Is there any evidence to dispute it?

[fol. 574] Mr. Mahoney: They arraigned him after they took him from City Court.

The Court: Yes, within minutes or an hour after the Government had him in their custody.

Mr. Mahoney: Or several hours. But it wasn't too substantial after he was in their custody but in this motion I do say and submit to you the fact that he was in the custody of the Buffalo police and held on suspicion, the fact that he was in the custody of the Buffalo police and evidently with no charge against him, if Lieutenant Klenk is to be believed, until ten minutes of one on the following day, that that brings us squarely within the Anderson case.

The Court: Let us not discuss cases. Is it your contention the Government had neither the right nor the power to take these men from the custody of the police officers,

officials of Erie County, and arraign them on the Federal charge prior to the time they actually did it?

Mr. Mahoney: Yes, I say that they have that right.

The Court: They have that right?

Mr. Mahoney: Yes.

The Court: Do you know of any such case that holds that [fol. 575] the Federal government can take prisoners in the custody of the State and arraign them for their own purposes?

Mr. Mahoney: I think the best evidence to "Do I know of any case" was right here, a request that came from—

The Court: Do you know of any reported decision?

Mr. Mahoney: I do not other than what is said—

The Court: I think I will hold otherwise.

Mr. Mahoney: I say to you that this Anderson case goes right definitely into a situation where a sheriff had him in his custody and there was no arraignment whatsoever, and I say that it's comparable to the situation we have in our present case, that all they had to do was make a request of it but they made no such request.

The Court: Isn't the evidence he went over there sometime in the morning and asked to have this man turned over at eleven o'clock that morning?

Mr. Mahoney: I think you are quite right.

The Court: I will hold against you; you may have an exception.

Mr. Mahoney: I respectfully except to your Honor's rul- [fol. 576] ing. In that situation I would like the Court to give some consideration to this Skeeter matter and I assume your Honor is very familiar with the content of the Skeeter case.

The Court: Well, I am never too certain in answering yes, but all I will say about that is I have seen it. Is there anything in particular you would like to call my attention to?

Mr. Mahoney: No. I think I have covered what are the facts in this particular case and I think the Court is thoroughly familiar with that case and you are in a position to make the ruling you have in mind.

The Court: I am going to hold that it is a matter of law, that there was no unusual delay as a matter of law

that would foreclose testimony of Agents Eddy, Jenson or any statement obtained during the course of that interview.

Mr. Mahoney: In regard to what has been asserted here in support of this other ground, namely the incarceration of this man over a period of time and also the taking of him into the detective bureau and running him into the show-up room and exposing him to these people and the requests that he made for assistance from friends, [fol. 577] counsel, judges, U. S. attorneys, et cetera, I merely submit to you that definitely a case of coercion has been made out and the government hasn't met its burden of showing to the satisfaction of this Court by proof having probative value that there was no coercion.

The Court: That is what I would like to hear you on in regard to the facts; I think the law is pretty well settled in regard to both these contentions—perhaps I shouldn't say pretty well settled because I guess it changes, but settled up to today. Very frankly, about all I can say is here is a man suspected of several crimes, and here is information given—it seems to me entirely properly—it seems to me it would be a failure on the part of the F. B. I. if they didn't make it known to the local authorities that a crime, according to their information, was about to be committed. There is no evidence that they gave these local police any instructions; the local police do as they please. They arrested him, what seems to me, regularly. Here was a man that wasn't being held just for investigation for one simple matter; it was quite apparent the Buffalo police wished to interview him with regard to many matters, and [fol. 578] investigation went on. Now, perhaps for some reason that is unexplained, he arose at seven o'clock in the morning; he wasn't hungry at ten; given some food at twelve o'clock, and he chose, because of what he determined was its condition, not to use it. We can expect he would be questioned, talked to. Absolutely no evidence of physical force. Here is an intelligent, well-educated, physically strong, business-experienced man, under no handicap mentally and physically, and he tells us that the F. B. I. agents—I don't know his exact words, but something about "they treated me nice." I don't see any evidence

of coercion. All that there is to it, as I see it, is a lapse of time over which investigation ran, that is, by the local police. There is not even a hint of any overbearing or any threats by the police, the same thing by the F. B. I. The only thing that there is, as I see it, is that this man was persuaded, by his best testimony, he was persuaded to make a statement because Agents Eddy and Jenson told him that his mother and his wife were in the Niagara Falls' jail. They say they did not. I think there very definitely is a question of fact. I will not hold that this confession was involuntary as a matter of law. I will submit it to the [fol. 579] jury as a question of fact, the same as you would submit any question. They must reject the testimony of Eddy and Jenson, should it be offered, if they find it was involuntary, and they should reject and discard the statement if they find from the testimony it is involuntary. I will deny the motion.

Mr. Mahoney: Respectfully except, your Honor, to the ruling.

The Court: I would like to have the record show we have been engaged in this hearing since yesterday noon and it is now two-thirty. We should perhaps take a minute's recess, very short, before we commence.

JURY RETURNED

(Whereupon at 2:30 P. M. a recess was taken, and at 2:45 the Court reconvened, the jury was returned to the courtroom and the following proceedings had:)

Mr. Mahoney: If the Court please, at this stage may I request this direction by the Court to the jury, that inasmuch as all these proceedings are being reported extensively in the press in the City of Buffalo, the Court admonish the jury that the ruling the Court made was based strictly on a matter of law and it isn't to be construed by the jury or [fol. 580] jurors as any evidence pointing to the guilt of the defendant.

The Court: Yes. Members of the jury, as I have explained to you perhaps before, delays have occurred in this case which involved matters of law. They in part at least arise by reason of what I think are decisions of

courts higher than this one which I am bound to follow, correctly or not is an entirely different matter, and one over which you shall not pass in any way, and have no power to pass on in any way and one with which you will not concern yourselves because you will be concerned only with questions of fact, while the Court's responsibility is matters of law. Now, I assume, without having paid too much attention, that some of the recesses or time taken have been or will be reported in newspapers. I know that you are intelligent enough to know that whatever is written in a newspaper is not evidence; it is of no value to you. A newspaper runs its paper for the purpose of dissemination of news so if any of those—I urge you first not to read articles in the newspapers. I urge you secondly if they come to your attention in any manner ignore them, because, as I said before, I am sure that you are intelligent enough to know [Vol. 581] that evidence in the courtroom submitted to you is the only thing upon which you may act and the inferences that may logically be drawn from them, so don't try to speculate, don't try to second-guess; simply do, as you told me you would do, take your evidence from the witnesses and take your law from the Court as the Court gives it to you. All right, you may proceed.

Mr. Fallon: Recall Mr. Eddy.

The Court: Mr. Eddy has been sworn, and it is my recollection only a question or two was asked of him. If I were you I would repeat those first two or three questions, Mr. Fallon.

Gordon Eddy recalled as a witness by the Government, having been previously first duly sworn on oath, was examined and testified as follows:

Direct examination.

By Mr. Fallon:

Q. Mr. Eddy, where do you live?
A. Buffalo, New York.
Q. How long have you lived here?

A. For the past ten years.

Q. What is your occupation?

[fol. 582] A. Special Agent of the Federal Bureau of Investigation.

Q. How long have you been engaged in that work?

A. Approximately sixteen years.

Q. You are now assigned to the Buffalo office, are you not?

A. Yes, sir.

Q. How long have you been assigned to the Buffalo office?

A. For approximately ten years.

Q. Did there come a time on or about January 10, 1957 when you and Special Agent Omar Jenson interviewed the defendant, Frank Coppola?

A. Yes, sir.

Q. Whereabouts did that interview take place?

A. In the Buffalo Police Department cell block.

Q. Was there anyone else present other than you and Mr. Jenson and Mr. Coppola?

A. No, sir.

Q. At least at the beginning of the interview?

A. Yes, sir.

Q. And about what time on that date, that is, January 10th, did your interview begin?

A. Shortly after 9:00 P. M.

Q. Now, did you advise the defendant of his rights at that time?

A. Yes, sir.

Q. What did you tell him?

[fol. 583] A. We told him that he did not have to make any statement to us; that anything he told us could be used against him in a court of law, and that he was entitled to the advice of his attorney.

Q. Did he make any reply to that?

A. Yes, sir, he said he had heard it before.

Q. Anything other than that?

A. No, sir.

Q. Did there come a time when he said certain things relative to the armed robbery of the Clinton-Bailey Branch of the M. & T.?

A. Yes, sir.

Q. What did he say and what did you say to him?

A. He told us that he was a gambler; that he had lost and that he knew that the F. B. I. had been investigating him over a period of a year. He admitted that he had been one of the robbers of the Clinton Branch of the Manufacturers and Traders Trust Company. I asked him why he had undertaken the robbery, and he said that he was desperate, he owed fifteen thousand dollars to gamblers and they were pressing him hard for the money. He said he and a partner wearing stocking masks, these masks made of women's stockings, had entered the bank between two and two-twenty P. M. on February 15, 1956. He said when he entered the bank he told the individuals in the bank that this was a [fol. 584] stickup and told the people to put their hands up. He said that the president—which is a term he used for the manager—had his hand on the telephone and he walked over to the president, put his gun in his face, cocked the hammer and told him to get his hands off the phone, that this was a stickup and he wasn't fooling. He said that he walked back beyond the assistant manager, back into the tellers' cage area. There was one teller who was looking out the window in spite of the instructions he had given, and he grabbed her and threw her against the wall. He said his partner who was standing in the lobby had folded up on him, was mumbling instructions so that the people in the bank couldn't hear them, and he looked up and saw two men standing outside the bank door looking in. He said he had started to put money in the sack but he returned to the lobby and he and his partner had gone outside the bank doors and pulled the two men in the hall into the bank. He told us that the newspaper had made a comment to the effect that the door had been jammed by a rug when they attempted to shut it, and the newspaper was wrong, that a door stop had stuck and he could neither get the door open or closed. He said that—

Q. Let me interrupt you there for a minute. You made reference to his partner; did you ask him who his partner [fol. 585] was?

A. Yes, sir, I did.

Q. What did he say?

A. He told us that his partner's name was Danny and he referred to him throughout the interview as Danny. We asked for Danny's last name and he told us that there was no necessity for our asking that, Danny had been picked up with him that morning, that Danny had been in the line-up with him that night and that our agents were talking to Danny in the next room, and he pointed to the next room.

Q. Do you know of your own knowledge who the agents were speaking to in the next room?

A. Yes, sir.

Q. Who was it?

A. Dario D'Antuono.

Q. Proceed.

A. He said he had gone to the cages, filled the sack with money and started out of the bank. I asked him why he had walked by a safe containing approximately fifty thousand dollars in currency and four different cages and not taken the money, and he asked me in effect "Did you ever carry eighty pounds of money? I had a whole bathtub full." When he got to the door he said he had a little difficulty getting out of the bank because the door was [fol. 586] jammed and he had to force his way through. He commented on the fact that as he was leaving the bank the newspaper had said he had lost his hat. He said this was incorrect; he had intentionally thrown his hat down to mislead investigators. He told us that the hat had a New York City label in it and that his original intentions were to put papers from New York City in the lining, the inside lining of the hat, the inside band, and then throw the hat down so that the investigators would believe that the hat was—that the persons who pulled the bank robbery were from New York City. I asked him why he had pulled the robbery in a bank where—

Q. With regard to the newspaper, did he say he did that or not?

A. He said he had been unable to do it because of the fact that at the banana stand when he had looked for New York City papers he had been unable to find any. This was apparently, according to what he told us, just before the robbery.

Q. All right, go on.

A. I asked him why he had picked a bank to rob where he was well known, where his company did business and where he was a customer. He told me, "When you are desperate for money that you will do anything to obtain the money." I asked him wasn't he afraid of being recognized [fol. 587] by the employees of the bank, and he said he was wearing a mask and he felt that that would conceal his features, and he felt in addition to that the employees and customers would be so frightened that they would not obtain a careful description of the robbers and he felt he would be safe. I asked him—

Mr. Mahoney: Just a moment. Are you reading from something?

The Witness: I have a card here, yes, sir.

The Court: Have you been using notes?

The Witness: Yes, sir.

The Court: Let it appear the witness has been using notes contained on a card.

Mr. Mahoney: May I at this particular time inquire of the witness when this card was made?

The Witness: It was made this morning, sir.

Mr. Mahoney: Made this morning by you?

The Witness: Yes, sir.

Mr. Mahoney: From information in your possession?

The Witness: Yes, sir.

Mr. Mahoney: Would that be from the information that came to you prior to January 10, 1957?

The Witness: No, sir.

Mr. Mahoney: Would it be from notes you made prior [fol. 588] to that time?

The Witness: No, sir, it was notes made on January 10, 1957 during this interview.

Mr. Mahoney: But I said as of this morning, this being July 10, 1957, you made it from some record that was taken prior to today when you made it?

The Witness: Yes, sir.

Mr. Mahoney: Is that right?

The Witness: Yes, sir.

Mr. Mahoney: And when you say that it was taken from something that was made from notes made January 10, is that your typewritten report you refer to?

The Witness: Yes, sir.

Mr. Mahoney: May I have that marked as an exhibit at this time?

(Whereupon a card was marked Government's Exhibit 42 for identification.)

Mr. Mahoney: May I request at this time, your Honor, this witness testify now without referring to the card unless he is required to refer to it?

The Court: Yes. Don't use the notes, Mr. Eddy, unless Counsel asks you to use something to refresh your recol- [fol. 589] lection.

The Witness: All right, sir. I will turn them over to the court stenographer.

By Mr. Fallon:

Q. Do you recall now where you were?

A. I asked him if he had used a car in perpetrating this robbery and he told us that he had. And I asked him what type of an automobile and he said that it was an older model Buick. I asked him for the specific year and he was unable to give us the specific year. I asked him where he obtained the car and he said he had stolen it from the lot of the American Car and Foundry Industries. He said that he had gone to the lot with the intention of obtaining a car to perpetrate the bank robbery; that he had gone into the lot and he had found this Buick with the ignition unlocked and he knew that a Buick could be opened without a key, the ignition could be turned on without a key if the ignition was unlocked. He said the doors of the car were locked and he had used a stone and smashed the window to obtain entry into the car. He then drove the car to the bank. At that time I asked him if he was the one who drove the car and he made a statement to the effect when he planned a job he did everything, he ran everything, and he drove the car, and in addition he didn't like Danny's driving. [fol. 590] He said that Danny was too slow and indecisive at intersections and couldn't make up his mind what to do. I asked him why he needed—why he didn't use a fast car for the getaway from the bank and he told me he didn't need a fast car, he intended to switch from the Buick that had

been taken to a Coppola Company banana truck after the robbery and that he would be switched by the time the police arrived at the scene. I asked him how he knew that and he said he had timed it and estimated it would take the police five or six minutes to reach the scene of the bank robbery. I asked him what he did with the Buick after the robbery and he said, "You found it. You don't need to know any more than that, do you?" Then he went on to say they had switched from the Buick to a Coppola Company banana truck, driven back to the banana stand and hid at the banana stand until eight-thirty or nine o'clock that evening. After it got dark he said he and Dario D'Antuono had returned, he didn't mention D'Antuono by name—he said he and Danny had returned to Niagara Falls where they had split the money. I asked him what he did with his share of the money and he said he had paid off the gamblers he owed and that he used the rest of the money to have a good time. I asked him what he did with the clothes he wore during the bank robbery. He said he had [fol. 591] burned them and so that no investigator could make anything out of the ashes he had poured gasoline on the ashes and burned them again. I asked him if he burned them at the banana stand and he said no, that people could see the smoke, but he would not tell us where he burned them. I asked him what he did with the gun. He said he had gotten rid of it. I asked him where and he refused to tell us. He also told us he had attempted to pull this bank robbery a week before alone, and I asked him the circumstances with regard to that and he said he had stolen a Chevrolet from the same vicinity as where he had stolen the Buick; that he obtained this Chevrolet because the ignition was of the same type of ignition as a Buick; he had driven to the bank—

Mr. Mahoney: I object to this. It is not competent, relevant or material and not binding on the defendant. It is also the subject of another crime or another attempted crime and strictly prejudicial to the defendant.

The Court: Overruled.

Mr. Mahoney: Respectfully except.

A. (Continuing) He said he had gone to the bank; he wore a stocking mask; he had a gun with him; that he had

gone up to the second floor; that he had the mask on and he had the gun in his hand, but before he actually started [fol. 592] into the hallway to go in the bank he took one more look out the window and he saw a Brink's truck coming up to the bank and he knew that the Brink's men came into the bank with a delivery of money and that the Brink's guards carried guns in their hands. He said that in order to avoid bloodshed, particularly his own, he had returned down the stairs, taken the mask off, put the gun in his pocket, got into the Chevrolet and drove it back and dropped it at approximately the same spot where he had left the Buick the following week.

Q. Did he say anything in regard to what he did with the loot? Did he say anything with regard to what he got at the bank and what he did with it?

A. He said that they got less than the fifty thousand dollars the newspapers claimed, but he didn't tell us the exact amount, and he said the two of them split it and he paid off his debts and used the rest to have a good time.

Q. Did you say anything with regard to his wife and mother in this interview?

A. Yes, sir.

Q. What did you say?

A. I asked him what part both of them had played in the robbery of the Manufacturers and Traders Trust Company, and told him that our investigation had developed informa- [fol. 593] tion that they had been involved in this robbery to some extent. He denied that either one had been involved in the robbery.

Q. Did he ask you for assurances his mother and wife would not be prosecuted if he revealed his confession?

A. Yes, sir.

Q. What did you say?

A. We told him we could make no promises of any kind.

Q. At the end of this interview which you have just described, did you take a statement from the defendant?

A. Yes, sir.

Mr. Fallon: Mark this for identification.

(Whereupon a paper was marked Government's Exhibit 43 for identification.)

Q. I show you Government's Exhibit 43 for identification consisting of one and a half handwritten pages and ask you if you can tell us what that is?

A. This is the statement that Frank Coppola dictated to me on the night of January 10th and 11th, 1957.

Q. After he dictated it did he sign it? Did he read it?

A. Yes, sir.

Q. He signed it in your presence?

A. Yes, sir.

OFFER IN EVIDENCE AND OBJECTION THERETO

Mr. Fallon: I offer this statement in evidence.

[fol. 594] Mr. Mahoney: Could I see it, please?

(Mr. Mahoney reads Exhibit.)

Mr. Mahoney: If your Honor please, I object to this. I object to the introduction of this into evidence on the grounds that it is incompetent, irrelevant, immaterial; that it is in violation of Rule 5 of the Federal Rules of Criminal Procedure, and there is no proof here of the lack of coercion on the part of Messrs. Eddy and Jenson at the time that this alleged statement was taken, but on the further grounds that I wish to state—and I will stop immediately because you may want argument on this outside the presence of the jury—there is nothing contained herein relevant to the robbery of any bank on February 15, 1956.

The Court: Let me see it. I think he should tell us before I look at it as to how it was taken.

By Mr. Fallon:

Q. Mr. Eddy, about what time was the statement taken?

A. Approximately eleven-thirty or shortly thereafter we started.

Q. You originally asked him to give a statement—was he willing to do so?

A. No, sir.

[fol. 595] Q. There finally came a time when he was willing to give a statement?

A. Yes, sir.

Q. Do you recall how that came about?

A. He said he would give us his statement if he could dictate it verbatim and put it in his own words and put in there anything he wished to.

Q. Did he also request to put in something specifically with regard to his wife and mother?

A. Yes, sir.

Q. And, as you say, he indicated he wanted to dictate it verbatim?

A. That is correct.

Q. How did he do that?

A. He sat beside me—we were sitting on a bench, and I had a pad on my lap and he sat beside me and as I wrote he watched what I wrote and as I finished writing a sentence or a phrase then he would continue with his dictation and I would write it down.

Q. Then in the end he dictated just what he wanted to dictate?

A. Yes, sir.

Q. Did you ask him to detail the statement further?

A. Yes, sir.

Q. What did he say about that?

[fol. 596] A. He refused to.

Q. After he had dictated it you gave it to him to read, did you?

A. Yes, sir.

Q. And did he read it?

A. Yes, sir.

Q. And then he signed it in your presence?

A. Yes, sir.

The Court: There seems to be two signatures on the statement. Were they put there by yourself and Mr. Jenson?

The Witness: Yes, sir.

The Court: I think I will overrule the objection and receive the exhibit.

Mr. Mahoney: Respectfully except.

(Whereupon the statement previously marked Government's Exhibit 43 for identification was marked received in evidence.)

Mr. Fallon: I will read this to the jury, your Honor.

(Whereupon Government's Exhibit 43 was read to the jury by Mr. Fallon.)

By Mr. Fallon:

Q. Mr. Eddy, did you in the course of your interview with the defendant, Coppola, make any notes?

[fol. 597] A. No, sir.

Q. Your notes were made after the interview had been completed, is that right?

A. Yes, sir.

Q. Did he make any request to you with regard to the U. S. Attorney?

A. Yes, sir.

Q. What was that request?

A. He said he would like to talk to the United States Attorney with regard to a deal.

Q. And what did you say to him?

A. I told him that we couldn't make him any promises or any offers and couldn't make arrangements for him to see the U. S. Attorney under those circumstances.

Q. During the course of this interview did he say anything with regard to his wife and mother?

A. Yes, sir.

Q. What did he say?

Mr. Mahoney: I object to that. It is repetitious and—that is the only ground.

Q. You mentioned he mentioned it once. Did he mention it more than once?

A. Yes, sir, he mentioned it several times.

Q. What was the substance of that?

A. He kept repeating his wife and mother had no part [fol. 598] in the bank robbery and no knowledge of the bank robbery.

Q. Did he say anything with regard to them relative to any prosecution?

A. He asked if the Federal Bureau of Investigation or the U. S. Attorney would guarantee no prosecution would be undertaken against his wife and mother, and I told him we had no authority to make such a promise.

Q. Mr. Eddy, did you ever tell the defendant his wife and mother were in the custody of police at the time of the interview?

A. No, sir.

Q. Did you say anything else in regard to his wife and mother except what you have testified to?

A. Nothing, except to ask him of their complicity in any of the crimes we were investigating.

Mr. Fallon: No further questions.

The Court: Cross examination.

Cross examination.

By Mr. Mahoney:

Q. Mr. Eddy, during this trial during this week and the first three days of last week you have been in close collaboration with Mr. Eger, Mrs. Clayback, Miss Nehring and Mrs. Smith, have you not?

A. I have talked to them, yes, sir.

[fol. 599] Q. And also Mr. Buyers?

A. Yes, sir.

Q. And you have had conferences with them in the office of the F. B. I., have you?

A. No, in the office of the U. S. Attorney.

Q. In the office of Mr. Henderson, the United States Attorney?

A. That is correct.

Q. And you have had a number of conferences, have you not?

A. With relation to each individual?

Q. Well, as to their part or the part they were playing in this case, yes.

A. I believe with each witness that the conferences were limited to two.

Q. In other words, there were no more than two present whenever a conference took place?

A. No, I mean two conferences.

Q. Two conferences when those individuals were present, is that right?

A. Well, they were present at different times, not the same individuals were present at each conference.

Q. Well, I named four individuals. Would you mean it was limited to two conferences as to each of the four, is that correct?

A. That is correct.

Q. Back on June 10, 1957, approximately a month ago, did [fol. 600] you have some conferences with them at that time?

A. I included that conference.

Q. You included that? And, of course, as you said here a short time ago on your direct examination this morning, you made some notes?

A. Yes, sir.

Q. And you made notes to assist yourself, is that right?

A. Actually I didn't need them; I don't know why I carried them to the stand.

Q. You don't know why you carried them? Do you know why you made them if you didn't need them?

A. Just to refresh my recollection.

Q. And, of course, relative to your investigation here you had access to the information that you had developed in this investigation since February 15, 1956, did you not?

A. Yes, sir.

Q. Were you called into this particular matter on February 15, 1956?

A. Yes, sir.

Q. The day it occurred?

A. Yes, sir.

Q. Were you in the bank on that particular day?

A. Yes, sir.

Q. Did you converse on that particular day with Mr. Eger?

A. Yes, sir, I did.

[fol. 601] Q. And did you also talk with Mrs. Clayback, who was then Miss Sullivan?

A. Yes, sir.

Q. And you talked to Miss Nehring?

A. Yes, sir.

Mr. Fallon: I would like to point out to your Honor this is all new matter.

The Court: Overruled.

Q. And you talked to Mrs. Smith, is that right?

A. Yes, sir.

Q. In addition to those individuals you talked to Mr. Will, the assistant manager of the bank, didn't you?

A. Yes, sir.

Q. And there were a number of other witnesses at the bank that you talked to?

A. I don't believe that I personally talked to any of the others at that time.

Q. Have you any recollection of having talked to Miss Geraldine Wyzneski?

A. No, sir, I don't.

Q. Your answer was no?

A. No, sir.

Q. Did you talk to Miss Anita Cinnati?

A. Not at that time, no, sir.

Q. And what about Odelia Syzdek?

[fol. 602] A. Not at that time.

Q. And Dolores Schuman?

A. No, sir, not at that time.

Q. So that your conversations on February 15, 1956 were with the five individuals, two men and three women we have designated here, is that right?

A. Yes, sir.

Q. At that particular time, of course, you were inquiring of them as to what had occurred between the hours of 2:10 and 2:20 on the afternoon of February 15, 1956?

A. Yes, sir.

Q. And at that particular time you took a narration from each one, did you?

A. I obtained information as to what happened personally from about four of those individuals.

Q. Who is the one you exclude?

A. Mr. Will was the only one I don't believe I obtained.

Q. You don't recall? But, nevertheless, the information you got from them, that is, when you endeavored to get the information you approached it in such a fashion as "Tell me what occurred from the time you noticed a commotion occur at the door leading into the bank," is that right?

A. Yes, sir.

Q. As you got the narration from them of what they [fol. 603] recollected I suppose you put that in your investigation reports, did you not?

A. We submitted reports, yes.

Q. You made notations, didn't you?

A. Yes.

Q. You didn't rely on your recollection?

A. No, sir.

Q. So that those four on that particular day, to the best of your recollection, gave you their version of what happened from the time a commotion occurred at the door until two men left?

A. Yes, sir.

Q. Is that right? And then after February 15, 1956 you had further interviews with the same people, did you not?

A. Yes, sir.

Q. And also you had interviews with people other than the five that we discussed here?

A. Yes, sir.

Q. And at that particular time you were checking further as to what other facts they could recollect that they had seen or heard on the particular day of February 15th?

A. Yes, sir.

Q. And, of course, you made notes as to that?

[fol. 604] A. Well, with regard to the five witnesses, they furnished question and answer statements as to what happened.

Q. And was it the first five I indicated to you or was it somebody else?

A. I believe it was the first five you indicated.

Q. That would be Mr. Eger, Mr. Will, Mrs. Clayback, Miss Nehring and Mrs. Smith?

A. That is correct.

Q. And as to the others, on other occasions you took certain information from them that they gave you as to what their recollection was?

A. I don't believe—you mean other employees of the bank?

Q. Yes, sir.

A. I don't believe that I personally recorded information from them, no sir.

Q. Well, when you went out to the bank on that occasion of February 15th, were you accompanied by somebody from the F. B. I.?

A. There were several agents there.

Q. Do you know approximately how many?

A. No, sir, I couldn't recall.

Q. You haven't any recollection of the approximate number of agents that were there that day?

A. No, sir. I was only at the bank a short time and then I accompanied Mrs. Clayback, Mrs. Smith and Miss [fol. 605] Nehring with the Buffalo police to downtown to the Buffalo police headquarters.

Q. Then did you return to the bank that day?

A. No, sir.

Q. Was it on that particular day before you went to police headquarters with them you took their narration from them?

A. Partially at the bank and partially at police headquarters.

Q. Now, on later occasions approximately how many times did you return to the M. & T., Clinton-Bailey Branch, after February 15, 1956?

A. I believe the next time I personally returned was on February 20th.

Q. February 20th? And was that for the purpose of further interviews?

A. Yes, sir.

Q. And was it with either of the three young ladies you just designated or the two gentlemen?

A. No, sir, I had come to the bank to show some photographs we had to the employees of the bank, and I was talking to Mr. Eger.

Q. Mr. Eger? And then subsequent to—I think you said February 20th, sir, did you not?

A. Yes, sir.

[fol. 606] Q. Subsequent to that particular day did you go back to the bank for further information?

A. Yes, sir.

Q. And would you know approximately how many times you went to the bank during the period of the month of February and throughout the month of March, 1956?

A. To the bank itself I believe in February I went one more time, and in March, I don't believe personally that I was at the bank at all.

Q. Well; then, it was during March, and particularly March 17th of 1956, that some of the people from the bank were up in the office of the F. B. I.?

A. February 27th.

Q. February 27th?

A. '56, yes, sir.

Q. The employees were in the office of the F. B. I. here in Buffalo?

A. Three of the employees were.

Q. Who would that be?

A. That would be Mrs. Clayback, Miss Nehring, and Mrs. Smith.

Q. At that particular time they were there for the purpose of being interrogated as to their recollection of what occurred on February 15th?

A. Well, partially.

Q. Partially, yes. So that you were getting further de- [fol. 607] tails from them, were you not, on the 27th of February?

A. No, sir, that wasn't our purpose in bringing them here on the 27th of February.

Q. Whether that was your purpose or not, that was what you did when they actually got there, isn't it?

A. We asked them about certain events that had occurred, yes, sir.

Q. And isn't it a fact that—have you any recollection on March 17, 1956 that some of the employees from the bank were in the office of the F. B. I.?

A. No, sir, I don't recall that.

Q. You have no recollection?

A. No, sir.

Q. Now, after these interviews you had with these people that were in the bank throughout February—and did you say you had none in March?

A. To my recollection, none that I personally had.

Q. Well, you continued your examination or investigation during March, did you not?

A. Yes, sir.

Q. And you continued your investigation throughout the ensuing months?

A. Yes, sir.

Q. And eventually, was it in November of 1956 that you became connected with Mr. Buyers, the third?

[fol. 608] A. No, sir, that wasn't the first time I became acquainted with him.

Q. Had you known him prior to that time?

A. Yes, sir.

Q. And approximately how long?

A. Since early in March, to the best of my recollection; early in March of 1956.

Q. March in 1956, is that correct?

A. Yes.

Q. And from March of 1956 up to and including November 5 of 1956 did you have any contact with him relative to Mr. Coppola and the M. & T. bank?

A. Yes, sir.

Q. You did? And did you receive any reports from him?

A. Not written, no, sir.

Q. You didn't receive any written reports?

A. No, sir.

Q. Well, were these verbal reports?

A. He furnished verbal reports, yes, sir.

Q. You understand that I asked you as to a date prior to November 5, 1956—you say that he did furnish you verbal reports?

A. Verbal information, yes, sir.

Q. Well, as a matter of fact, he never gave you a written report until after January 10, 1957, did he?

[fol. 609] A. Not to me personally.

Q. Or to the Bureau?

A. Yes, sir, he did.

Q. A written report?

A. A written report, yes, sir; a written statement.

Q. A written statement?

A. Yes, sir.

Q. Now, in addition to a written statement, did he ever give you any written reports as to any of the information which he had given to you verbally prior to January 10, 1957?

A. Yes, sir, he had.

Q. He had?

A. Yes, sir.

Q. Do you know as to when he gave you those reports?

A. There were two in December, to the best of my recollection.

Q. December of 1956?

A. Yes, sir.

Q. And those were written reports?

A. Yes, sir.

Q. Of course, Mr. Eddy, you were not in here at the time Mr. Buyers testified, whether it was Monday or Wednesday of last week, but it was either one of those two days—you were not in the courtroom when he was on the stand?

A. No, sir, I wasn't.

[fol. 610] Q. But your recollection is that there were two reports he gave to the Bureau in December of 1956?

A. Yes, sir.

Q. Now, can you recall any specific dates prior to November 5, 1956, when he gave you any verbal reports relative to the defendant, Coppola?

A. The only one I can recall specifically I believe was March 6 of 1956.

Q. 1956?

A. Yes, sir.

Q. And you have no recollection of anything subsequent to that date?

A. I have recollections that I had contacts with Mr. Buyers, but I can't recall the dates.

Q. Did they occur often between March 6, 1956 and November 5, of 1956?

A. No, sir.

Q. They didn't? They were infrequent, I take it?

A. Infrequent.

Q. Approximately how many in number?

A. I believe there were two or three in March and possibly two or three in April, and then I had none until October, and then I had another contact with Mr. Buyers following another crime that was committed.

Q. Do you remember on November 5 of 1956 of meeting [fol. 611] him out at the corner of Main and Kensington?

A. Yes, sir.

Q. Was that your usual meeting place?

A. No, sir, that wasn't.

Q. That was one of a number, is that it?

A. That is correct.

Q. And on November 5 of 1956 Mr. Buyers met you out at Kensington and Main, did he not?

A. Yes, sir.

Q. And at that particular time in your automobile, or at least an automobile you were an occupant of, you were given certain details of what was allegedly said, isn't that a fact?

A. Yes, sir.

Q. And then do you recall again on November 13th of 1956 of meeting Mr. Buyers?

A. I don't believe that I met him on the night of the 13th. I believe I talked to him on the telephone and then I talked to him personally on the 14th.

Q. Was that it? Well, let us adopt your date, November 14th, 1956, you talked to him personally and at that particular time again certain details were mentioned to you relative to the M. & T. holdup on the previous February 15th, 1956?

A. Yes, sir.

[fol. 612] Q. And then do you recall November 26 of 1956.

A. I don't recall it by date; I recall that we had several meetings in that period.

Q. Do you recall of any other meeting you had in November, 1956 where you met Mr. Buyers and received information from him?

A. These questions are difficult to answer because I was in daily contact with Mr. Buyers, every day, from November 5th through January 10th.

Q. And by "daily" would I be correct in my assumption —and if I am not correct please correct me—from November 5 of 1956 you were in daily contact with him, either by telephone or personally?

A. That is correct.

Q. And on each of those occasions you were receiving some information about the M. & T. holdup, were you?

A. No, sir.

Q. On some of those occasions were you receiving information about the M. & T. holdup?

A. Yes, sir.

Q. And then throughout December, I take it, that daily contact—that was at least thirty-one contacts by telephone or personally in December of 1956?

A. Well, those contacts were not all for the purpose of obtaining information.

[fol. 613] Q. Well, were a number of them?

A. Yes, sir.

Q. Would you recall December 3rd specifically?

A. Yes, sir.

Q. Would you recall December 5th?

A. I couldn't recall it specifically; I could recall December 3rd specifically.

Q. Would you recall January 5th specifically of 1957?

A. Yes, sir.

Q. And you would recall January 7th of 1957?

A. Again I can't recall specifically that date but I know we had meetings in January.

Q. And on a number of these occasions, Mr. Eddy, of course, he was reporting to you what he supposedly heard relative to the occurrences on February 15, 1956?

A. That and other matters.

Q. But they included February 15, 1956, is that right?

A. Yes, sir.

Q. Now, so that when it came to the factual layout of the premises at the Clinton-Bailey Branch of the M. & T. on February 15, 1956, and the personnel of the bank that was in there after two o'clock and before two-twenty, or up to two-twenty, you had a real grasp of that right from February 15, 1956 on, did you not?

A. Yes, sir.

[fol. 614] Q. And when it came to the manner of the supposed entrance of the men who came in there, their activities when they got in there, the manner in which the first man went to the right and went over to Mr. Eger, put a gun in his face, said, "This is a stickup," and Mr. Eger said, "You're kidding," and he said, "I am not kidding," and Eger said, "I guess you are not kidding," and put the phone down; the fact that the man then went to the rear

of the bank, turned left and went to the first cage where he grabbed a woman who was at that time Miss Sullivan, and where he put her, the fact that he went in the second cage to Miss Nehring, and the fact that Mrs. Smith came out of her own volition; and the manner in which the man then left and went to the front of the bank and went in the hallway; and the fact that he came back again and came back to the rear of the bank, and the fact he went to the first drawer, or rather the drawer in the first cage and it was locked and then went to the drawer in the second cage, and he shifted a gun from his right hand to his left hand, and then he extracted a pillowcase from his pocket and opened it up and then he scooped up the money and then went to the next cage and came out of there and went to some auxiliary cage and went in there and retraced his steps to the front of the bank—that was all information you [fol. 615] had in your possession before January 10, 1957, wasn't it?

A. You have got quite a few items in there, Counselor.

Q. Yes, but that is the information you had in your possession?

A. In general, that is correct.

Q. It is correct? It is correct, isn't it?

The Court: In general it is correct?

The Witness: Yes.

Q. Is there anything specifically that is incorrect which you had learned from Mr. Eger and Mr. Will or any of the other employees?

Mr. Fallon: I object to the question, a long question like that. I don't think this witness should be called upon to state whether there is anything in the question that might be incorrect.

The Court: I am not quite certain just what you are getting at, but go ahead.

Mr. Mahoney: I can do it specifically step by step but it is going to be lengthy.

Q. Prior to January of 1957 and for some time prior thereto you knew that two men had entered the bank, had you not?

A. Yes, sir.

The Court: You were told these things?
The Witness: Yes, sir.

[fol. 616] Q. That is what I am getting at—by Mr. Will and these other people, and you were told by these people as to the man approaching Mr. Eger who had a phone in his hand, isn't that right?

A. I was told by Mr. Eger that information.

Q. And you were told as to what the man had to say and that the man had a gun in his hand and then Mr. Will said, "You are kidding," and then put the phone down and said "I guess you are not kidding."

Mr. Fallon: I will stipulate the agent had full knowledge of the robbery.

The Court: I am afraid you made a mistake in your first statement as to Mr. Eger. I don't want to cut you short. You heard the affairs of February 15th described many times or several times by employees of the bank?

The Witness: Yes, your Honor.

The Court: And you assumed they were correct and acted on such information?

The Witness: Yes, your Honor.

The Court: Maybe that would save us some time. I don't want to interfere, but very frankly I am not quite certain what the point is here.

Q. Do you recall here on your direct examination that you said that on January 10th—I think you fixed the hour [fol. 617] shortly after eleven-thirty, and if I am wrong I will stand corrected, sir—as to what the defendant started to tell you?

A. Yes, sir.

Q. All right. Now, you said that he said he and his partner entered between two and two-twenty, the bank?

A. That isn't what he told me. Shortly after eleven-thirty; that is the time he started to state—his admissions occurred shortly after nine-thirty.

Q. Let me get that straight. You say what I just asked you about he stating he and his partner entered the bank

between two and two-twenty P. M. is not what he said to you shortly after eleven-thirty?

A. That is what he told us shortly after nine-thirty.

Q. After nine-thirty? All right, after nine-thirty of the night of January 10, 1957?

A. Yes, sir.

Q. And you knew of that fact yourself at the time, didn't you?

A. Yes, sir.

Q. You also testified that he said he put a gun in the man's face?

A. Yes, sir.

Q. You knew of that fact, did you not?

A. Yes, sir.

[fol. 618] Q. Had known of it for months?

A. Yes, sir.

Q. You also said that he said he went back to the rear of the bank?

A. Yes, sir.

Q. And you knew of that fact for months, didn't you?

A. Yes, sir.

Q. And I take it that was contained in the reports you had in your files you had been in possession of for months?

A. Yes, sir.

Q. Yes. And then you testified as to a teller being in the rear of the bank—that is, you testified he said that there was a teller back there and that it was necessary for him to grab her or something by his hand on her?

A. Yes, sir.

Q. And you knew of that fact and had learned of that fact from Mrs. Clayback, hadn't you?

A. Yes, sir.

Q. And he said—or rather you said he said he saw two men in the lobby looking in?

A. I mentioned before that he said his partner had folded up on him in the lobby and he had to take over and that he had seen these two men out there and returned to the lobby.

[fol. 619] Q. And the fact that he had returned to the lobby and that he went into the lobby and pulled two men from the hall into the bank, you had known that for months because you learned of it on February 15, 1956?

A. Yes, sir.

Q. And then you said that he said something about the door jamming, and whether it was with a rug or in some other manner, you knew that the door had jammed, as a result of your interview of February 15, 1956?

A. I knew that the door was stuck; I didn't know the cause of it.

Q. And you also knew that the man who had gone to the back of the bank on this second occasion had left with a container, with a pillowslip or something else, that he had left with the money from the bank, and you had learned that from Mrs. Nehring, Mrs. Clayback, Mrs. Smith, Egee and Will, isn't that right?

A. Yes, sir.

Q. Now, relative to the Buick automobile and as to where it was stolen from, you knew that fact yourself and had learned that from Mr. Wyzneski, when you brought him in?

A. Mr. Andrzejewski, yes, sir.

Q. Is it Andrzejewski?

A. We didn't know positively that was the car used in [fol. 620] the robbery; we believed that it was.

Q. But you knew that a car had been stolen that day because Mr. McMahon located it, did he not?

A. Yes, sir.

Q. A fellow F. B. I. agent?

A. Yes, sir.

Q. And you knew that it was owned by Mr. Andrzejewski and had been taken from the lot?

A. Yes, sir.

Q. Now, you testified that this man told you those respective facts on the night of January 10 of 1957 at police headquarters, isn't that so?

A. Yes, he did.

Q. I show you here Government's Exhibit 43. Can you show me any of those details in that statement?

A. If you would be more specific, Mr. Mahoney, as to what you mean by "details".

Q. Can you show me in there where he said he was in the bank between two and two-twenty P.M. on February 15, 1956?

A. No, he does not mention that fact.

Q. Can you show me where he said he went to the right and that there was a man with a telephone in his hand and that he pointed a gun at that man and said, "This is a stickup" and the man said, "You are joking," and he said [fol. 621] "I am not joking," and the man said, "I am sure you are not," and put down the telephone from his hand?

A. No, he does not mention that.

Q. And there is nothing in there as to where he said he went to the rear of the bank?

The Court: Just a minute. Aren't we wasting time? As I understand the evidence, this statement doesn't purport to show any such thing. As I understand from the witness, and if I am wrong let us find out, Mr. Coppola dictated what was in the statement insofar as the facts are concerned?

The Witness: He did, your Honor.

The Court: No claim that you took down every word he said from nine-thirty on?

The Witness: No.

Q. As a matter of fact, you didn't take anything down he said from nine-thirty on, did you?

A. Nothing except what appears here.

Q. That wasn't taken at nine-thirty, that Exhibit 43 that is in your hand?

A. You said from nine-thirty on.

Q. Pardon me?

A. You said from nine-thirty on.

Q. But that statement wasn't taken until sometime after eleven, isn't that so?

[fol. 622] A. That is correct.

Q. Right. So that while you were conversing with him and you said sometime after nine o'clock he started to tell you as to how he had robbed this bank and the details of it, you made no notes of that, did you?

A. No, I did not.

Q. And you have no notes at the present time that you made at that time?

A. Not notes that were made during that interview, no.

Q. And then it was sometime after eleven o'clock that you say this statement was made?

A. Yes, sir.

Q. And when this statement was made and signed by Coppola—that is so?

A. That is correct.

Q. Any of those so called details that you claim he told you shortly after nine o'clock and up until eleven o'clock or sometime after are not incorporated in Exhibit 43?

A. They do not appear in that statement, no, sir.

Q. As a matter of fact, you learned on January 10th of 1957 at about ten o'clock in the morning that Mr. Coppola had been apprehended, had you not?

A. No, sir, I did not.

Q. At what time did you learn of it?

[fol 623] A. Approximately noon.

Q. At noon?

A. Yes, sir.

Q. And do you know as to whether or not your superior at that time, John A. Roche, or your Bureau knew of the fact of his apprehension prior to ten o'clock or prior to noon when you learned of it on January 10, 1957?

A. I learned it through the fact Mr. Roche had learned it, yes, sir.

Q. Did you learn the Bureau had information about the arrest of Mr. Coppola prior to noon time?

A. Yes, sir.

Q. Did you learn that the apprehension took place about ten o'clock in the morning?

A. I couldn't answer that, to my recollection.

Q. And from the time you learned about the apprehension of Mr. Coppola on January 10, 1957 what would you say was the earliest time you arrived at police headquarters in the City of Buffalo, New York?

A. Sometime after eight P.M.

Q. And when you arrived over there at eight P.M. you found Coppola was still in custody, did you not?

A. Yes, sir.

Q. And at that particular time or sometime thereafter you started talking to him?

[fol. 624] A. Shortly after nine P.M. we talked to him.

Q. And did you talk with the co-agent that went over there with you?

A. Mr. Jenson?

Q. Yes, sir.

A. We went over together, yes, sir.

Q. And it was shortly after nine you started to talk to him?

A. That is correct.

Q. And at that particular time what you were telling Coppola was as to what you had learned over a period of months about the facts and circumstances surrounding the holdup of the M. & T. Bank on February 15, 1956?

A. No, sir, we talked to him about other robberies, the robbery of the Liberty Bank, the planned robbery of the Marine Trust Company and other robberies.

Q. And you included the M. & T.?

A. Yes, sir.

Q. That is what I am asking you.

The Court: That wasn't what you asked him. You limited it to the M. & T. alone. Proceed.

Q. Well, now you know I am asking about the M. & T. You did tell him about the M. & T. and what—

The Court: Are you asking him about the M. & T. alone? I am asking you so there won't be any mistake or misunder-[fol. 625] standing by the witness. State in your question whether you are limiting it to the conversation of the robbery of the M. & T. alone.

Q. In the conversation that you had with him shortly after nine, part of it was directed towards the facts behind the M. & T., isn't that right?

A. Well, yes, sir.

Q. You were telling him as to the facts you had learned from outside sources, isn't that so?

A. Partially, yes, sir.

Q. Partially? And in those facts were the facts that had come to you from Buyers as one of them, wasn't it?

A. Yes, sir.

Q. And did you continue to tell him that at least as part

of your conversation up to and including the time you claimed that he started to talk to you about the M. & T.?

A. You mean did I spend all the time talking about the M. & T.?

Q. I didn't say you spent all the time—

The Court: He is asking what you meant. Why don't you tell him?

Q. I am asking you part of that time from the time you started to question him shortly after nine until you say he started to talk to you—and that was some forty-five minutes later, wasn't it?

A. No, sir, it was approximately some thirty minutes later.

[fol. 626] Q. Have you ever testified it was thirty-nine minutes later?

A. No, not that I can recall; I may have.

Q. Oh, you may have? Would that have a tendency to refresh your recollection that you had testified within the last twenty-four hours it was thirty-nine minutes?

A. I believe that the interview commenced at 9:04, and I believe that Coppola's admissions were at 9:41.

Q. 9:04 and 9:41? So that would be thirty-seven minutes, wouldn't it?

A. Yes, sir.

Q. All right. And during that thirty-seven minutes you were telling him of these details you had learned from Buyers about implicating him?

A. We did not tell him the source of our information. We did not carry on the entire conversation; it was a two-way street.

Q. You carried on the majority of it. Did you tell him?

A. That I can't recall specifically.

Q. Then, as I understand it, at this hour of 9:41 is when you say that Coppola started to talk to you?

A. That is when he made his first admission with regard to the Manufacturers & Traders Trust Company robbery.

Q. And that continued up to and including sometime after eleven o'clock, and is that when you started to sit down with Exhibit 43 here and start to make this out?

[fol. 627] A. No, sir, we talked about other robberies during that period.

Q. But I say after he had made the statements to you about the M. & T. or anything else, shortly after eleven o'clock you started to make this statement up?

A. It was approximately 11:30 when we started this.

Q. Eleven thirty? Now, you say he dictated this to you?

A. Outside of the first two paragraphs everything there was dictated by Frank Coppola.

Q. But you didn't say that on your direct examination, "outside of the first two paragraphs"?

A. I don't recall.

Q. But as to this part of the statement as to the date and Buffalo, New York and Page 1, he had nothing to do with that, did he?

A. No, sir.

Q. As to the fact that it was the statement of Frank Coppola, he had nothing to do with that?

A. No, sir.

Q. And this first paragraph and this second paragraph, he had nothing to do with either one of those two?

A. He furnished us the information that appeared in the second paragraph.

Q. But he had nothing to do with the dictating of it?

A. He didn't dictate it, that is my verbiage.

[fol. 628] Q. Is this first paragraph your recollection of the form that you ordinarily use in your work?

A. Yes, sir.

Q. And were you writing this from a form you use in your work or was this just from memory?

A. That is from memory, sir.

Q. Did you ever—by the way, this statement here started shortly after eleven thirty?

A. Yes, sir.

Q. What is your recollection, five or ten minutes after?

A. I would say within ten minutes after eleven-thirty.

Q. Would it be a pretty good statement to say it would be eleven-forty P.M.?

A. That would be very close.

Q. Right?

A. Yes, sir.

Q. And, as a matter of fact, it was completed, was it, at 12:54 A.M.?

A. No, sir.

Q. When?

A. It was signed by Frank Coppola at approximately 12:30.

Q. Twelve-thirty? Is there anything on here as to time that would refresh your recollection?

A. No, sir.

Q. Nothing? And you say it took then approximately [fol. 629] fifty minutes for it to be dictated and signed?

A. That is correct, sir.

Q. After the statement was signed by Coppola you left police headquarters?

A. No, we did not leave after it was signed.

Q. Did you stay in headquarters all night?

A. No, we talked to—I shouldn't say we talked to—Frank Coppola, he talked to us for a period of twenty minutes or so before we left.

Q. Did there come a time when you left the Buffalo police headquarters?

A. Yes, sir.

Q. Was that around one o'clock in the morning?

A. Yes, sir.

Q. When you left, Frank Coppola was still in jail, was he not?

A. Yes.

Q. Your conversation with him had occurred in the cell block of police headquarters?

A. Yes, sir.

Q. And you left him in the cell block when you left?

A. We turned him over to the guards. We did not see him put back in the cell.

Q. You returned to this office of the F. B. I. here, did you not?

[fol. 630] A. No, sir, we went and obtained a package of cigarettes and returned to police headquarters and took it up to the cell block to give it to Frank Coppola.

Q. With the exception of the pack of cigarettes which you gave him sometime between twelve-thirty and one o'clock, that is about the only thing that you gave him, with the exception of some individual cigarettes and a glass of water from nine o'clock on, isn't that so?

A. Yes, sir.

Q. You never made any inquiry as to whether or not the man had been fed or had been given anything to drink during January 10th, did you?

A. He never asked us, never told us.

Q. You never made any inquiry, did you?

A. No, sir.

Q. And as to whether or not he had been fed or had anything to drink you did not know, did you?

A. No, I did not. When he asked for something we gave it to him.

Q. And that was limited to water and a cigarette, wasn't it?

A. That is all he asked for.

Q. After you had brought the package of cigarettes back to him you came back to this building where your office is located?

A. Yes, I did.

[fol. 631] Q. And spent the rest of the morning of January 11th here?

A. Yes, I did.

Q. And you were here until noon time on January 11th or shortly thereafter?

A. Yes, sir.

Q. From the time you learned of the arrest of Frank Coppola by the Buffalo police, which you said was at noon on January 10, 1957, until you left the office of the F. B. I. around noon or shortly thereafter on January 11th, did you ever arraign him before a United States Commissioner, a judge or a magistrate?

Mr. Fallon: I object to that, your Honor, as being something that has already been passed upon and not within the province of the jury.

The Court: We had better take a short recess. The jury may be excused. Court will remain in session.

(Whereupon the jury was dismissed from the courtroom and the following proceedings were had in the absence of the jury:)

The Court: Gentlemen, the only thing I see about this, there is no particular harm in the question; the only thing is whether this question of unreasonable delay is a question of fact or a matter of law. As to the coercion, I have al- [fol. 632] ready ruled on that being a matter of law. I think perhaps I have to charge the jury that there was no unreasonable delay.

Mr. Mahoney: And not as a question of fact?

The Court: I don't think so. If you have any authorities that would hold it is a question of fact I would be glad to receive it. I am not always certain of these things, however, and I think the question of unreasonable delay would ordinarily be a matter of law. I have never seen it passed on as a question of fact, but I am not at all certain where we are going here, and I am calling your attention to it.

Mr. Mahoney: I would like to have you consider the situation as to Section 165 of the Code of Criminal Procedure of the State of New York, although while not exactly in the same phraseology as Rule 5 of the Federal Code, nevertheless, they are quite comparable, and in it there is a reference to something quite similar to the Federal rules, referring to Rule 5 contained in the Federal Code and to 165 of the Code of New York State. I would certainly want an opportunity to check this before you would accept it as being substantial or solid, but I am quite sure that we have [fols. 633-634] had it submitted as a question of fact.

Mr. Fallon: I believe there are two cases which we will endeavor to present to you to indicate it is a question for the Court, which really resolves down to a question of law. In this particular case there wasn't a semblance of evidence to indicate there was any delay. I think it is something very well within the province of the Court to pass on.

The Court: That is the only thing we have to decide. As far as this witness's answer is concerned, there is no question about that. The question as I remember it was "Did you arraign him at such and such a time" that doesn't do any harm one way or the other. I am just wondering if we ought to chart our course a little bit and see where we are going with it, but I assume if there is a factual contention

that there was a delay then, of course, Mr. Fallon has got to produce something else. I am trying to avoid it unless there is some necessity for it. As to the coercion, I don't think there is any question about that.

Mr. Mahoney: Being a question of fact?

The Court: Yes. But offhand I can't say I have ever seen it particularly passed on that the question of delay [fol. 635] is solely a question of fact. Perhaps we had better take a short recess.

(Whereupon the Court was in recess, and at 5:00 P.M. the Court reconvened and the jury was returned to the courtroom and the following proceedings had:)

(Mr. Eddy resumes stand.)

The Court: Perhaps we had better have the last question read and the objection again.

(Whereupon the reporter read the last question as above recorded.)

Mr. Mahoney: I object to that question.

The Court: Overruled. I will receive it.

The Witness: No, sir.

By Mr. Mahoney:

Q. Did you personally on January 10th or 11th, 1957, personally charge Frank Coppola with any violation of—

A. No, sir.

Q. —of the holdup of the M. & T. Bank on February 15, 1956?

A. No, sir, I did not.

Q. Did you ever make a demand upon any member of the Buffalo Police Department, including Chief of Detectives Golombeck and Lieutenant Klenk or any other officer, a demand that Frank Coppola be turned over to you or any other member of the Federal Bureau of Investigation?

[fol. 636] A. No, sir, I did not.

Q. On the occasion you were in Buffalo police headquarters on the night of January 10, 1957 and during your stay from nine o'clock until approximately one in the morning, was Frank J. Liddy, Jr., a member of the Federal Bureau of Investigation, in the cell block?

A. I believe he was. I couldn't definitely answer that question.

Q. Was Nicholas Obuhanick, a member of the F. B. I., in or about that cell block?

A. I believe he was.

Q. Was Frank Jenkins, a F. B. I. man, in and about the cell block?

A. Yes, sir.

Q. And, of course, you testified that Omar Jenson was your associate who was with you during this time?

A. Yes, sir.

Q. Was Elmer Moulin, a member of the F. B. I., in and about the cell block?

A. You keep referring to "in and about". They were in interview rooms. There was no wandering around in and out of the rooms.

Q. I mean they were in some part of the cell block or they were about it in some room that makes up the cell block?

A. We were each in individual rooms.

[fol. 637] Q. And was also John A. Roche, who was the head of the Buffalo office of the Federal Bureau of Investigation, also in the cell block at police headquarters on that night?

A. Other than the time he came in I cannot answer that question.

Q. But you did see him there on one occasion?

A. That is correct.

Q. Now, on any occasion between sometime after nine o'clock when you say that Mr. Coppola started to talk to you on January 10, 1957, did he ever make a statement to you of having gone to an apartment in the vicinity of Clinton and Bailey or Gilbert and Babcock or Hubbard Street?

A. He referred to an apartment, but I don't quite get what you are driving at.

Q. Haven't you testified as to what he said to you, namely, that from the location of the bank itself that they drove to where the truck was parked—didn't you say that?

A. Yes, I did.

Q. And they there switched cars to the truck?

A. Yes.

Q. And that they then drove to the banana warehouse or store?

A. Yes, sir.

Q. And that they remained there for several hours until it got dark?

A. Yes, sir.

[fol. 638] Q. And then they left?

A. Yes, sir.

Q. At no place in your direct examination did you ever say Mr. Coppola had mentioned an apartment, did you?

A. No, sir.

Q. And you didn't deliberately leave that out of your testimony, did you?

A. Yes, sir, I did.

Q. You deliberately left it out?

A. Yes, I did.

Q. Was there any reason when you were asked as to what he said to you that you did deliberately leave that out of your testimony?

A. Yes, there was.

Q. What was it?

A. It involved another bank robbery.

Q. We were discussing, of course, the night of January 10th. Then, on the occasion when he was talking to you about the details of the M. & T. he made no mention of having stopped at an apartment?

A. With regard to the M. & T. he made no such statement.

Q. That is what I asked you—he never made such a statement?

A. No, sir.

Mr. Mahoney: That is all, your Honor.

[fol. 639] Redirect examination.

By Mr. Fallon:

Q. Did the defendant, Coppola, when you interviewed him, did he ever make any complaints to you in regard to lack of food or drink or anything of that nature?

A. No, he did not.

Q. Did he appear to you to be nervous or afraid?
A. No, he was very affable and talkative.
Q. Did you make any promises to him?
A. No, sir.
Q. Did you threaten him?
A. No, sir.
Q. Did you offer him any intoxicants of any kind?
A. No, sir.
Q. You stated on cross examination to Mr. Mahoney in response to his question that you took no notes during the course of your interview?
A. That is correct.
Q. Can you tell this Court and jury why?

Mr. Mahoney: I object to that. That is not competent as to why he didn't take notes. That isn't competent or binding on the defendant as to what his mental operation was at that particular time.

Mr. Fallon: It was brought out he did not take notes. [fol. 640] He was asked the question and he answered he did not, and I think he has got a right to explain why he didn't.

The Court: Also he said he didn't write anything. I think I will sustain it in that form.

Q. On the night of January 10, 1957 when you had this interview with the defendant, Frank Coppola, did he tell you anything that you did not know previous to that night?
A. Yes, he did.
Q. With reference to the M. & T. robbery?
A. Yes, sir.
Q. What were those things?
A. He told us that he was in debt to the extent of fifteen thousand dollars, that he was being pressed for payment of these debts, that he had attempted the robbery a week before alone. He told us about taking the banana truck back to the banana company garage, and we had had no previous information to that effect. He told us about burning the clothes and pouring gasoline on them and burning them again, and he told us about getting rid of the guns, and he told us about what he did with his share of the money.
Q. And that is about the extent of it?
A. Yes, sir.

[fol. 641] Q. With regard to the placing of the charge against this defendant and his arraignment is that anything that was handled by you at all?

A. No.

Q. It isn't something that you have any personal knowledge of?

A. No, sir.

Mr. Fallon: No further questions.

* * * * * * *

[fol. 649] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Let the record show that the jury is not present and has been excused tempofarily. Perhaps I should make this statement, that because I want no misunderstanding as to the legal holding or as to any holding with reference to the question of unreasonable delay, and so that there will be no question about it, I am taking this opportunity to have it put on the record, the request of Mr. Mahoney.

Mr. Mahoney: If your Honor please, at this time I am requesting the Court to submit to this jury in your charge the question as to the unreasonableness of the delay in ar-[fol. 650] raigning the defendant, Frank Coppola, which you understand and know was January 11, 1957 at approximately 4:00 P.M. as a question of fact, and that is pursuant to the rule as expressed in the McNab case, with which you are familiar.

The Court: In order to make it clear, I will perhaps reiterate what may be already in the record. I hold and find after the preliminary hearing that there was no such unreasonable delay on the part of the Federal authorities which would prevent the use, in itself would prevent the use of the admissions and statement made by the defendant to the two F. B. I. agents on the night of January 10, 1957. I make that as a holding and finding, and a holding as a matter of law. I will refuse to submit the question of the unreasonableness of the delay to the jury to determine as a question of fact. This does not, however, prevent, nor has it prevented the use of the time, the use of the argument as to the lapse of time insofar as it bears on the ques-

tion of coercion. And I rely upon my ruling in refusing to submit the question of unreasonable delay to the jury, among others, upon the case of *Rettig vs. The United States*, 239 F (2) 916, especially at 922, where, as I read it, it [fol. 651] holds that the submission of the question of the unreasonableness of the elapse of time between arrest and arraignment is a question of law for the Court and that it was error to submit it to the jury. You may have an exception, Mr. Mahoney.

Mr. Mahoney: Thank you, your Honor.

[fol. 652] COURT'S CHARGE

Ladies and gentlemen: This trial is drawing to a close. Before I start the part which might be considered the formal charge to the Jury, let me thank you for the attention that you have given, the patience you have exhibited, and for the tolerance that you have extended these interested in the trial of this case. A fairly lengthy time has been consumed in the receipt of a comparably small amount of testimony. The recesses have been frequent and matters of law have arisen which at times required your absence and probably tried your patience. Those are matters which should not disturb you in any manner. You are not to guess, surmise or speculate on their purpose or on their results. And I simply ask you to keep in mind the statement that you made to me when you were drawn as jurors, that you would take the evidence from the witnesses and the law from the Court as it is given to you and decide whatever issues of fact there are to be decided upon those two things, free from anything else. In thanking you, perhaps I ought to also impress upon you that you are about to approach the performance of your most important duties, and in that approach I hope you will give it, and I know that you [fol. 653] will, the same courteous, kindly attention, patient attention, which you have displayed throughout this trial, which to you may have been unnecessarily long.

Ladies and gentlemen, the Government claims and offers some evidence, and as I understand it, it is not disputed by evidence, that on the fifteenth day of February, I believe, 1956, that the Manufacturers & Traders Trust Company

Branch known as the Clinton Bailey Branch, which is a banking institution in the City of Buffalo, New York, two masked and armed men entered the premises and proceeded to take a sum of money, something in the amount of fifty-two thousand dollars. Now, out of that occurrence a dispute has arisen, and that dispute takes the form of a criminal case which is entitled The United States of America on the one hand and Frank Coppola on the other. Between these two litigants a dispute has arisen and we have been engaged in the last several days in settling that dispute in accordance with the procedures which we use in determining a dispute such as is involved here.

Now, perhaps as a prelude I shall refer briefly to the form of procedure we use because I already used that phrase. You will notice in the trial of a disputed question [fol. 654] of fact that outside and beyond the witnesses there are three principal sets of performers. Let us refer first to Counsel.

Each of these litigants, the United States of America on the one hand, and Frank Coppola on the other, are represented by Counsel, by spokesmen. Now, their duty is to present their cause of their clients in an intelligent manner and to the best interests of their own client or the side that they represent, and to urge upon you the particular contentions which they say support the attitude or contention of their client. These two Counsel engaged in this case do not agree. And sometimes a layman wonders how it is that intelligent men disagree in the trial of a lawsuit. That is not to be wondered at. In fact, it is expected; in fact, it is required, because our system is built on what we call an adversary proceeding. We find that the truth is best served when opposing or contending parties are given their opportunity to present their evidence and argument in a court of law under the rules which the court lays down. So that part is played by Counsel. They have a right to urge upon you—not only the right but the duty—the cause of their respective client but their arguments are not fact, are not [fol. 655] evidence, are not law, and it is for you to determine the soundness of the argument, adopting it if you find it is based upon evidence that is produced, and rejecting it if you find that it does not have a proper basis for your consideration or your adoption.

Now, let us turn to the Court for a minute. Upon the Court is the responsibility, primary responsibility for the orderly, speedy conduct of the trial, for the receipt of evidence in an orderly, proper manner. The most important function of the Court is to rule on matters of law, so that as you already know I have admonished you several times that the actions of the Court throughout the case deal with matters of law, and it is the Court's responsibility and the Court's alone for the correct determination of it or of them. Perhaps the most important function that the Court occupies or performs in a trial of litigated questions is that he discusses with you the rules of law that you should use in the performance of your duties, and that is known as the charge to the jury, and that is just what we are doing now. What I am about to do is to discuss with you the questions of fact that are to be submitted to you, your obligation in [fol. 656] connection with them and the rules you shall follow in performing that obligation or that function.

Now, let us turn to you, the members of the jury. You have heard it said, many times, perhaps, several times in the course of this trial, the jury is the sole judges of the fact, and that statement is entirely correct. Upon each individual juror, upon the jury collectively, is the obligation, the duty, for the correct determination of the questions of fact that will be submitted to you. No man or woman may escape that obligation. It is his and hers individually; it is the obligation of the jury collectively.

Now, ladies and gentlemen, you are not to pay any attention or give any importance to the fact that the Court has overruled objections or sustained them, has denied or granted motions, has taken recesses, has ruled on any matters of law. They are not of any importance, and if any juror or any members of the jury have any idea that the Judge has any opinion as to the facts involved in this litigation discard it entirely. It isn't the Court's responsibility for the correct determination of questions of fact; it is yours, and yours alone, and you may not avoid it by wish- [fol. 657] ing it over or mentally putting it aside as what some one else may think because it is yours, and it is your judgment, your decision which you must give in the performance of your duties.

'Now, ladies and gentlemen, with that little prelude, let us get down to this case itself. This case is prosecuted in the name of The United States of America against Frank Coppola. It is a criminal action and it is prosecuted in that way because all criminal actions violating Federal laws are prosecuted in that way. And in order to bring the matter to your attention and so that you will understand it, it seems to me it would be most logical to first refer to what is being charged here; and the charge here arises by reason of an indictment.' Now, don't be disturbed by the use of that word "indictment".

An indictment is simply a written charge which advises the defendant of a violation of law, a violation of law upon which he will have to defend himself. The fact that an indictment is presented is no evidence of guilt. It is simply one of the procedural means that we have, and it has a very definite purpose. It serves the purpose of advising the defendant of the exact violation of law charged against him so that he will have knowledge of that charge prior to [fol. 658] the trial and be given an opportunity to prepare his defense thereto. It has another purpose, and that is a limiting purpose. It limits the Government from the presentation of any other charge of violation of law except that contained in the indictment. And so here in considering these charges you will understand, I am sure, that it is only the charge contained in the indictment that brings this trial or that is involved in this trial, and the defendant only is confronted with the charges contained therein. He is not required to meet any other charge than that contained in the indictment, and if evidence of any other violations of law or claimed violations of law or suspected violations of law have crept into this case you are not to pass upon them; they are not before you. There is a requirement and you may not pass upon the guilt or innocence of any person in any matter other than that contained in the indictment. Now, let us see what the indictment contains.

The indictment is contained in three separate counts. That is, there are three separate violations of law charged in this indictment. And while I think of it, I will refer to them—you will consider each violation of law separately and [fol. 659] your verdict will be rendered as to each violation

of law, so that I ask you to pay attention while I read those to you and discuss these three different violations with you. Count One charges—and I will read it—"On or about the fifteenth day of February, 1956, in the City of Buffalo in the Western District of New York, the defendant, Frank Coppola, and Dario D'Antuono, by force, violence and intimidation took from the presence of employees of the Manufacturers and Traders Trust Company, Clinton-Bailey Branch, approximately fifty-two thousand five hundred and twenty-nine dollars of United States currency, which money was in the care, custody, control, management and possession of that bank, same being a member of the Federal Reserve System and a New York banking corporation, the deposits of which are insured by the Federal Deposit Insurance Corporation." And all of this is charged as a violation of Title 18, Section 2113-a of the United States Code. That charge is easy to understand, and perhaps it would be wise since it is a particular statute referred to to give you the substance of the statute, the violation of which is charged in Count One of the indictment. The statute reads essentially as follows: "Whoever by force and violence or [fol. 660] By intimidation takes from the person or presence of another any property or money belonging to or in the care, custody, control, management or possession of any bank is guilty of a violation of law." Count One charges such a violation.

Let me turn now to Count Two. Count Two charges that on the same date, in the same place, the two defendants entered the Clinton-Bailey Branch of the Manufacturers and Traders Trust Company, a member bank of the Federal Reserve System, whose deposits are insured by the Federal Deposit Insurance Corporation, with intent to commit at said bank the crime of larceny. I think that is easy to understand also. Putting it in plain simple English, it means that it is charged that these two men entered the bank with an intent to steal therein or therefrom, and the particular section of law which is claimed to be violated reads substantially as follows: "Whoever enters or attempts to enter any bank or any building used in whole or in part as a bank with intent to commit in the bank or building or part thereof so used any felony affecting such bank is guilty of a

violation of the statute." In other words, Count Two means simply that on the same date the two defendants entered [fol. 661] the bank with intent to commit the crime of larceny or with the intent to steal therefrom.

Now, let us turn to Count Three. Count Three charges that at the same place and same date the same defendants did take and carry away with intent to steal approximately fifty-two thousand, five hundred and twenty-nine dollars of United States currency, which money was under the care, custody, control, management and possession of the bank, which is a member of the Reserve System and whose deposits are insured as I have indicated in the other counts. Let us turn, then, to the statute which it is claimed is violated. As I see it, the statute in its essential part reads as follows, "Whoever takes and carries away with intent to steal any property or money exceeding one hundred dollars belonging to or in the care, custody, control and management or possession of any bank is guilty of a violation of the section."

Now, those are the three counts contained in the indictment, and I have read to you the statute or those portions of the statute upon which the counts are based. There is another provision in the same statute which is applicable to each of the three counts, and it reads as follows; or [fol. 662] essentially as follows, "As used in this section," as I have already read, "the term 'bank' means any member of the Federal Reserve System and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation."

Ladies and gentlemen, putting it in plain simple English, as I see these three counts, Count Number One charges the taking from the bank, by force, violence and intimidation, a sum of money. Count Two charges the entry into the bank for the purpose of committing the crime of larceny. Count Three charges the taking away from the bank with intent to steal this sum of money, something over fifty-two thousand dollars.

Ladies and gentlemen, the ultimate question of fact which you will have to decide is the guilt or innocence of Frank Coppola as to each of these three counts. By

his plea of not guilty to each count of the indictment, Mr. Coppola, as he has the right to do, put in issue all of the material allegations of the indictment and each count thereof, and it becomes the burden imposed upon the Government to establish his guilt before you may find a verdict of guilty against him as to each individual count. Now, what is the burden which I just mentioned that is [fol. 663] placed upon the Government in this matter of proof sufficient to warrant a verdict of guilty? That proof is expressed by the term that the Government must prove the guilt of the defendant beyond a reasonable doubt before you are justified in finding a verdict of guilty. Now, ladies and gentlemen, I think you might ask next, "Well, what do you mean when you say that the burden is upon the Government to prove beyond a reasonable doubt the guilt of this defendant?" It means simply this, that the Government must produce evidence showing the guilt of the defendant, and the measure of that burden is gauged by the term "reasonable doubt." It is not required under our system that a defendant prove his innocence. The burden is the other way. The burden is upon the Government to prove his guilt.

Now, what does "reasonable doubt" mean? Reasonable doubt, ladies and gentlemen, means just what the words imply. There is nothing magical about it, nothing involved about it; it means a doubt founded upon reason, upon intelligence. It is such a doubt that a juror might have, or might have after a consideration of all of the evidence, after a discussion of the evidence with his fellow jurors, such a doubt that he has based upon reason and upon in- [fol. 664] telligence with a desire of the individual juror to solve that question of fact. If he has such a doubt that would require him to hesitate to act then you may say he has a reasonable doubt. And any juror having any such reasonable doubt is required to vote a verdict of not guilty. Reasonable doubt, however, ladies and gentlemen, is never a guess, a surmise or a sham. It never may be used by an individual juror to avoid the performance of an unpleasant duty.

Close to this rule as to reasonable doubt is another rule you have heard discussed, and that is the rule of the

presumption of innocence. As I already indicated, it is closely related to the rule as to burden of proof. It means simply this, that under our system a defendant is not required to prove his innocence; the burden is upon the Government to prove his guilt, and so he enters upon the trial of a case with that presumption existing. That presumption remains with him during the course of the trial, the offering of evidence, the argument of counsel, the charge to the jury—it remains with him until and unless you in your jury room in a discussion of all of the evidence arrive at the conclusion that his guilt has been established within the rule that I just laid down for you beyond a reasonable doubt.

[fol. 665] Now, ladies and gentlemen, probably the next thing you would ask me, "Well, how do we laymen weigh evidence? How do we determine the weight that will be given evidence in determining whether or not the Government has borne the burden imposed upon it?" There is no magical or engineer's rule that I can give you whereby you weigh a particular bit of evidence and give it a particular amount of weight. All that I can tell you is that you can take into consideration certain factors in determining the weight that you will give a witness's testimony. You have a right to take into consideration the demeanor of a witness; his or her frankness or evasiveness. You are not to weigh evidence by the number of witnesses. It is, rather, the probitive value of the evidence that is offered by the witness that is weighed. You have a right to take into consideration the interest of the witness; you have a right to take into consideration his or her intelligence, his or her experience, their powers of observation, their powers of expression; you have a right to take into consideration the education of the witness, his experience and his demeanor, his actions, and you have a right to take into consideration, of course, all of the surrounding circumstances which come to your attention [fol. 666] and which you believe are established by the evidence that is produced. Most important, I believe, is that you use the common sense of men and women of experience in determining the weight that you will attach

to an individual witness's testimony or to all of the witnesses' testimony. You have a right to take into consideration the status of the witness, his or her interest in the transaction involved. You have a right to take into consideration the fact that police officers or peace officers, investigating officers, are men engaged in the investigation of violations of law. You have a right to take into consideration in addition to the things that I have given, their own status, any motive that they may have which color their testimony.

Ladies and gentlemen, again I say, use your own good common sense as men and women of experience, men and women dedicated right now to just one task, and that is the determining of the facts in regard to this particular dispute that has arisen. There are some other rules in connection with the determination of the weight you shall give evidence, and I will refer to them briefly. There has been some argument here as to the testimony of an [fol. 667] accomplice. Now, I will say to you that D'Antuono, is, on the evidence here, within the rule that I will lay down for you. An accomplice is one who unites with another in the commission of a crime voluntarily and with a common intent. An accomplice does not become incompetent as a witness because he participated in the criminal act charged. On the contrary, the testimony of an accomplice alone, if believed by you, may be of sufficient weight to sustain a verdict of guilty, and thus so especially where there is corroboration or support by other evidence. However, the jury should keep in mind that such testimony is to be received with and weighed with caution and great care.

There are another couple of matters in connection with the testimony of weight to be given evidence which I will refer to. There is a rule to this effect, that if a person, if you find that a witness has wilfully misstated a material fact you may disregard his or her testimony. You are not required, however, to disregard his or her testimony as a whole; you may accept that which you believe and reject that which you believe to be untrue. Now, we have another matter which has been the subject of some argument and some discussion, and that is the question of the weight

[fol. 668] to be given confessions or admissions. I think I can best express it in this language: a confession is an admission by a defendant of the facts constituting the crime charged. A statement less than an admission of all of the facts charged would be a partial confession, but the same rule applies to each. The very nature of a confession requires that the circumstances surrounding it be subject to careful scrutiny in order to determine whether it was voluntarily made. If the evidence does not convince you beyond all reasonable doubt that a confession was made voluntarily the jury should disregard it entirely. On the other hand, if the evidence does show beyond a reasonable doubt that a confession was, in fact, voluntarily made beyond a reasonable doubt, the jury should consider it as evidence against the defendant who voluntarily made the confession. In this case, ladies and gentlemen, in determining that question you may consider all of the facts, all of the circumstances, all of the evidence surrounding the making of the confession or statement or admissions, any one of which are under your consideration. The essential test is, "Was it voluntarily made?" and if it is voluntarily made you may accept it. If you do not find [fol. 669] that it was voluntarily made then it is your duty to reject it as evidence.

There is another rule of law which I must not forget to charge you, and it relates to the matter of evidence. The failure of the defendant to testify in his own behalf creates no inference of any kind in regard to the evidence offered. No unfavorable inference may be drawn in this case because of the failure of Mr. Coppola to take the stand. It is simply a repetition of the rule I have already stated. There is no burden upon the defendant to prove his innocence. The burden is upon the Government to prove his guilt.

Now, ladies and gentlemen, those in the main are the rules you will use in determining the guilt or innocence of Frank Coppola. In fact, while I think of it, I should refer to it—D'Antuono is not on trial here. You may not pass in any manner upon his guilt or his innocence. No inference of guilt may be drawn as to this defendant by reason of the fact that D'Antuono is named in the indict-

ment and not brought to trial at this time. Now, those are the rules of law you shall use. Let us go back for a moment to the question of fact in regard to each one of these counts, because I told you that you must determine from the evi- [fol. 670] dence here within the rules that I have laid down to you the guilt or innocence of Frank Coppola in connection with each one of these counts. Now, as I see it, Count One, you will notice, contains certain essentials: one, there must be force and violence or intimidation. I think those words define themselves. Intimidate means to place in fear, to subject by reason of force or by reason of argument. Beyond that it is required that something must be taken from the presence of another—in this case, money. That money has to be in the possession of a bank. Now, those are the essentials of Count One, or main essentials of Count One. Ladies and gentlemen, you have to decide whether or not the evidence is sufficient to establish the burden imposed upon the Government as to Frank Coppola as to that count. Turning now to Count Two, you will find that the elements are a little bit different. There has to be an entry into the bank or into the building which is used partly as a bank with an intent to commit a crime, or in this case the crime of larceny. So, you have to have the entry, the intent to commit the crime of larceny therein. Have they been established? I don't think there needs to be any particular further definition. Intent is a state of [fol. 671] mind; it seldom if ever is proved by direct evidence, but intent is generally proved by circumstances, by indirect evidence, by the conditions and the happenings which occur at the time and the place, and from those a jury may find the question of intent.

Now, let me go to Count Three. You will notice Count Three charges simply the taking and carrying away with intent to steal money or anything of value exceeding a hundred dollars in the care or custody of the bank. I don't think it needs any discussion. The same definition of intent is required in that section and it is not necessary for me to repeat my discussion as to intent which I made a moment ago. Now, ladies and gentlemen, with these rules of law what is the contention here? As I see it, the contention here is a narrow one. The actual evidence taken is not

lengthy. The issue of fact is concise; the evidence is understandable and I think easily understood by you, and the rules which are given to you easily applied. I am going to discuss these contentions, and if I do not give all of the contentions of each of these parties, that does not mean they should be ignored, but I am giving them to you only for the purpose of pointing up the questions of fact which you are to decide. The Government contends that on the [fol. 672] fifteenth day of February, 1956, two men, one of whom was Coppola, entered the Manufacturers Bank, masked and armed, and took from that bank fifty-two thousand dollars. The Government contends that in doing that that three crimes were committed, the one, Count One, taking of money by force and intimidation; the second one, in Count Two, the entry into a building with an intent to steal, bank building, with intent to steal; and three, the taking from a bank a sum of money or thing of value over a hundred dollars. The Government contends that Coppola, the defendant here, was the prime mover in this illegal enterprise. The Government contends that it has proved and offered evidence here as to the commission of the crime itself—and I don't understand that the crime itself or the occurrences themselves are particularly disputed. And actually when you boil it all down the main dispute, as I see it, is a matter of identification, a matter of whether or not Coppola was one of the men who entered this bank at the time in question. The Government says through reputable evidence that has been established beyond a reasonable doubt, that it has borne its burden; the Government says Coppola has been identified by lay witnesses, by employees. The Government says that Coppola's own [fol. 673] admissions to a deputy sheriff, to members of the Federal Bureau of Investigation, established beyond a reasonable doubt that he was the man or one of the men involved in this transaction. The Government says that those admissions are corroborated by circumstances; they are corroborated by the statements of other witnesses; they are corroborated by the physical conditions, by the car and its condition, the fact that it was stolen. The Government contends that Coppola himself voluntarily,

without intimidation, without coercion, over his own signature admits that he was one of the persons involved in these violations of law. The Government says that its witnesses are persons of integrity, to be considered by you as men and women of integrity whose testimony may be believed. The Government presents and urges that the testimony of D'Antuono, although an accomplice, should be considered by you and goes to the establishment of its contention. The Government says that D'Antuono's statements are corroborated and supported by outside conditions, by outside evidence which is undisputed. And the Government says they have established each of those crimes beyond a reasonable doubt.

Now, the defendant by his plea, as he has the right to [fol. 674] do, puts the Government to its proof on all of the material allegations of the indictment. The defendant contends that the proof offered here is insufficient, that the men and women witnesses here, that their testimony is not of such a quality that would carry conviction within the rule as laid down to you. The defendant contends that any confession that was given or any admissions made were the result of such a set of circumstances as to constitute an involuntary act on the part of the defendant and that it should be disregarded.

Ladies and gentlemen, when men disagree we take twelve men and women from the ordinary walks of life and we call them in here and we ask them to sit in a jury box and listen with patience while the evidence is produced, and we ask them under our system to be honest with themselves, honest to their oath, honest in their convictions to give a fair and honest consideration to contentions made, to the evidence offered and let their verdict follow accordingly. Ladies and gentlemen, the enforcement of law, like the trying of an individual charged with a violation of law, is the duty of all of us. It is particularly the duty of those engaged in the trial of a criminal case, and you [fol. 675] and I who take part therein cannot shirk our responsibilities because our duties are absolute, they are uncompromising. Fact finding, ladies and gentlemen, is a hard, cold job, not to be swayed by sympathy, not to be influenced by prejudice. The success of our jury system

lies only in the fact that men and women with an honesty of effort, with a pureness of motive, can sit here and decide, unafraid, unashamed, unswayed by sympathy, unmoved by prejudice, to decide, without any regard for what might happen, the truth from the facts that are submitted to you. That is your duty. That is what the United States of America on the one hand expects of you; that is what the defendant on the other hand expects from you, and you may offer them nothing less. Ladies and gentlemen, this case in my opinion is rather concise. The questions of fact are sharp, concise. The evidence is clear. It is for you to determine where the truth lies. The success of our system lies in the honesty of purpose of each individual juror and the best effort that they have in the performance of their duty. This case is important, as all cases are important. It is important to the defendant because he himself is personally involved; it is important to the United States of America because upon the government is the [fol. 676] primary responsibility for the enforcement of laws which govern our society in which we live. Bearing these things in mind, give this case, as I know you will, your honest, sincere and best judgment and nobody can find fault with the result.

Any exceptions or requests?

Mr. Fallon: No requests or exceptions, your Honor.

The Court: One of the things that I did not tell you is that in the form of your verdict you will render a verdict of guilty or not guilty as to Counts One, Two and Three of the indictment. Your verdict on each count must be unanimous.

Mr. Mahoney: No requests, your Honor.

The Court: First let me discharge the alternates. You are discharged with the thanks of the Court. Will you Marshals just hold the jury in the hall until I see if there are any exceptions?

(Whereupon the jury returned from the courtroom and the following proceedings had in the absence of the jury:)

The Court: Are there any exceptions?

Mr. Fallon: No, your Honor.

EXCEPTION TO CHARGE

Mr. Mahoney: Nothing but this, your Honor, in connection with your decision and the exception granted to [fol. 677] submit the question of unreasonableness of time as a question of fact to the jury. I merely wish to except to the Court's failure to so charge.

The Court: All right, stand in recess.

(Whereupon at three-thirty P.M. a recess was had and at 4:25 the following proceedings occurred:)

The Court: Let the record show that at 4:25 now the defendant and his counsel are present, the Government is represented, and I am advised by the Marshal the jury is ready to report. You can bring in the jury, Marshal.

(Whereupon the jury was returned to the courtroom and the following proceedings had:)

The Court: All right, Mr. Clerk, I am informed the jury is ready to report. Take the verdict.

(Whereupon the Clerk took the verdict of the jury.)

Mr. Mahoney: May I ask that the jury be polled, your Honor?

(Whereupon the jury was polled by the Clerk of the Court.)

(Whereupon the jury was dismissed by the Court.)

[fol. 678] The Court: All right, gentlemen, are there any motions to be made now?

Mr. Mahoney: Yes, there is.

The Court: All right, Mr. Mahoney.

MOTION FOR NEW TRIAL AND IN ARREST OF JUDGMENT AND DENIAL THEREOF

Mr. Mahoney: I would like to move under Rule 33 of Federal Rules of Criminal Procedure for a new trial, and as your Honor is familiar with that rule, it is essential that that be made within five days after the return of the verdict. And in connection with that particular motion I would request that the Court set some date that is conven-

ient for it when that might be presented at more length before you. And in addition to it, I am moving under Rule 34 of the Federal Rules of Criminal Procedure for an arrest of judgment, and again, your Honor is familiar with the fact that that must be made within five days after the return of the verdict and would ask for the same disposition to be made in regard to that matter.

The Court: Well, Mr. Mahoney, I certainly don't want to cut anyone off in a case that is of some importance. I am going to tell you very frankly that my part in the case has been rather deliberate and rather slow, that for that reason any move that was made was made mostly [fol. 679] on law, was made after consideration and after discussion and consideration on my part. It is true that a delay in your motion involves me coming back to Buffalo, which I shouldn't object to, and I don't particularly object to it. However, I don't think that your motion has any substantial basis, putting it very bluntly and very frankly. I think I know the legal matters involved here. Throughout the trial I have, I think, made all of my rulings that in any way I was doubtful upon in favor of the defendant, and I can't think of anything except the considered question of delay, which I doubt if further argument on is necessary, that could possibly be raised in this case. I don't want you or your client or the people in the community to feel that I am discourteous or that I wouldn't want to come back to Buffalo to hear this motion, but I do think you ought to make a showing of substance, that your motion has substance, before I do that. Very frankly, I am inclined to consider your motions as made right now and to deny them, because my present thought is I can't see any argument in this case that would move me under either to grant a new trial. I think this defendant has had just as fair a trial as we could possibly give him. I think [fol. 680] he has received the favorable side of all rulings with that one exception, possibly, which you wish to raise and which you have the right to raise. Let me ask you this: what is the custom in this district in regard to sentencing? Is there any custom that you follow?

Mr. Fallon: The general custom in the district, your Honor, is to submit a probation report.

The Court: I don't want a probation report in this case.

Mr. Fallon: Without regard to that there isn't any particular custom. I mean a pre-sentence report. Did you understand me to mean that?

The Court: A pre-sentence report, yes.

Mr. Mahoney: May I say this in connection with the motion I made—of course, a motion is before you at the present time, but I have just conferred with my client, Mr. Coppola, here, and insofar as that request for any future time to be heard, that he says that I have authority to, having made the motions, to await the disposition of the Court as of this moment without any thought of argument in the future.

The Court: Then I will tell you gentlemen practically what I told you before, I do not think I need any argument [fol. 681] on the motions at this time. Again, I hope you don't take it as cutting you off. I will deny your motions.

Mr. Mahoney: Respectfully except, your Honor.

* * * * * * *

[fol. 682]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Indictment No. 7001-C

UNITED STATES OF AMERICA

v.

FRANK R. COPPOLA

JUDGMENT AND COMMITMENT—July 11, 1957

On this 11th day of July, 1957 came the attorney for the government and the defendant appeared in person and with counsel

It Is Adjudged that the defendant has been convicted upon a verdict of guilty as charged, this 11th day of July, 1957 of the offenses of taking by force & intimidation, U.S.

Currency from custody of employees of bank insured by the Federal Deposit Insurance Corp., entering said bank with intent to commit larceny & taking currency from said bank with intent to steal same, in violation of Sections 2113 (a) and (b), Title 18, U.S.C. as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of twenty (20) years—on count one (1) counts two (2) and three (3) being judged merged in count one (1), therefore no sentence being imposed thereon.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Stephen W. Brennan, United States District Judge.

Roland E. Logel, Clerk.

Leo J. Fallon, Asst. U.S. Atty.

Approved: John O. Henderson, U.S. Attorney

[fol. a]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

November 1956 Term

No. 7003-C

Vio. Sections 2113(a) and 2113(b), and Section 2, T.18 U.S.C.

THE UNITED STATES OF AMERICA

—vs—

JOSEPH SIMMONS, a/k/a JOSEPH SYNAKOWSKI: DARIO D'ANTUONO, a/k/a "DANNY" D'ANTUONO; CARMELO J. GIAMBRA, JAMES MILLIO, and FRANK R. COPPOLA

INDICTMENT—Filed February 4, 1957

The Grand Jury charges:

That on or about October 2, 1956, in the City of Buffalo, State and Western District of New York, the defendants, Joseph Simmons, a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a "Danny" D'Antuono; Carmelo J. Giambra and James Millio, by force, violence and intimidation, took, from the person and presence of employees of the Liberty Bank of Buffalo, Linwood Branch, approximately $23,775.10 of United States currency, which money was in the care, custody, control, management and possession of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation; in violation of Section 2113(a), Title 18, United States Code.

Count II

The Grand Jury further charges:

That on or about October 2, 1956, in the City of Buffalo, State and Western District of New York, the defen-

dants, Joseph Simmons, a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a "Danny" D'Antuono; Carmelo J. Giambra and James Millio, entered the Linwood Branch of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation, with intent to commit in said bank the crime of larceny; in violation of Section 2113(a), Title 18, United States Code.

[fol. b]

Count III

The Grand Jury further charges:

That on or about October 2, 1956, in the City of Buffalo, State and Western District of New York, the defendants, Joseph Simmons, a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a "Danny" D'Antuono; Carmelo J. Giambra and James Millio, did take and carry away, with intent to steal, approximately $23,775.10 of United States currency, which money was in the care, custody, control, management and possession of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation; in violation of Section 2113(b), Title 18, United States Code.

Count IV

The Grand Jury further charges:

That between on or about July 1, 1956 and October 2, 1956, in the State and Western District of New York, the defendant, Frank R. Coppola, did aid, abet, counsel, command, induce and procure the commission of a crime against the United States in the City of Buffalo, State and Western District of New York, to wit, the taking, by force, violence and intimidation, from the presence of employees of the Liberty Bank of Buffalo, Linwood Branch, approximately $23,775.10 of United States currency by Joseph Simmons; a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a

"Danny" D'Antuono; Carmelo J. Giambra and James Millio, which money was in the care, custody, control, management and possession of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal Deposit Insurance Corporation; in violation of Section 2113(a) and Section 2, Title 18, United States Code.

[fol. c]

Count V

The Grand Jury further charges:

That between on or about July 1, 1956 and October 2, 1956, in the State and Western District of New York, the defendant, Frank R. Coppola, did aid, abet, counsel, command, induce and procure the commission of a crime against the United States in the City of Buffalo, State and Western District of New York, to wit, the entering by Joseph Simmons, a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a "Danny" D'Antuono; Carmelo J. Giambra and James Millio, of the Linwood Branch of the Liberty Bank of Buffalo, with intent to commit in said bank the crime of larceny; in violation of Section 2113(a) and Section 2, Title 18, United States Code.

Count VI

The Grand Jury further charges:

That between on or about July 1, 1956 and October 2, 1956, in the State and Western District of New York, the defendant, Frank R. Coppola, did aid, abet, counsel, command, induce and procure the commission of a crime against the United States in the City of Buffalo, State and Western District of New York, to wit, the taking and carrying away, with intent to steal, approximately $5,700.00 of United States currency by Joseph Simmons, a/k/a Joseph Synakowski; Dario D'Antuono, a/k/a "Danny" D'Antuono; Carmelo J. Giambra and James Millio, which money was in the care, custody, control, management and possession of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System and a New York State banking corporation, the deposits of which were and are insured by the Federal

Deposit Insurance Corporation; in violation of Section 2113(a) and Section 2, Title 18, United States Code.

John O. Henderson, United States Attorney

A true bill:

Signature Illegible
Foreman

[File endorsement omitted]

[fol. 1]

In United States District Court
Western District of New York
Criminal 7003-C

United States of America

vs

Frank R. Coppola, Joseph Simmons, a/k/a Senakowski, James Millio, Defendants.

Transcript of Trial

Trial had before Hon. Justin C. Morgan, United States District Judge, Western District of New York, and a jury, at Buffalo, New York, commencing November 15, 1957.

Appearances:

Hon. John O. Henderson, United States Attorney, by John C. Broughton, Esq., and Leo J. Fallon, Esq., Ass't U.S. Attorneys.

William B. Mahoney, Esq., Attorney for Coppola.

Nathan D. Seeberg, Esq., Attorney for Simmons.

Alfred R. Pacini, Esq., and Nicholas Pierino, Esq., Attorneys for Millio.

* * * * * * *

[fol. 417] Proceedings of November 22nd, 1957, at 10 o'clock A. M.

Appearances: Same as before noted.

* * * * * * *

[fol. 542] WILLIAM A. BUYERS, III. called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Fallon:

* * * * * * *

[fol. 544] Q. You said there came a time when you did have a discussion with Frank Coppola relative to the robbery of the Liberty Bank, Linwood-North Branch?

[fol. 545] A. Yes, sir.

Q. When and where did that discussion take place?

A. It was on November 5th, 1956, it took place in the apartment of Frank Coppola in Niagara Falls.

Q. Who was present?

A. Frank Coppola, myself, his wife Phyllis and my wife.

Q. What was the occasion of that visit?

A. Just a social visit.

Q. You and your wife called on Frank Coppola and his wife?

A. Yes, sir

Q. Tell us in your own words just what happened and what was said.

A. While I was there Frank Coppola began to tell me that the F. B. I. had been bothering him again about two bank jobs.

* * * * * * *

[fol. 547] The Witness: Yes, he told me that the F. B. I. had been bothering him, especially about the holdup of the Liberty Bank at Elmwood and North, and he said he was figuring on moving to Florida, because they were bothering him and his friends. He says they think I pulled that bank job. He says "Well, I did." He told me his partner and Giambra pulled that bank job and they did it to make it look as if the same ones that had held up the previous bank, and the F. B. I. wouldn't be bothering Coppola, because he would have a good alibi.

* * * * * * *

[fol. 558] Q. Prior to any of these conversations with Frank Coppolla and the others you have mentioned, had you been contacted by the F. B. I. relative to the Liberty Bank robbery?

A. Yes, sir, I was.

Q. Had you been asked to work for them?

Mr. Mahoney: I object to any conversation between the F. B. I. and this witness.

The Court: Yes.

Q. Did you in fact work for them as an undercover agent?

A. Yes, sir.

Mr. Mahoney: I object to that.

The Court: Yes.

Q. Did you report to them regularly?

A. Yes, sir, I did.

Q. Did you report after each one of these conversations to which you testified this afternoon?

A. Yes, I reported to Mr. Gordon Eddy.

Mr. Fallon: No further questions.

* * * * * * *

[fol. 704] Proceedings of November 26, 1957, at 10 o'clock A.M. Appearances: Same as before noted.

* * * * * *

[fol. 818] Robert Gordon Eddy recalled as a witness by and in behalf of the Government, having been previously sworn, testified as follows:

Direct examination.

By Mr. Broughton:

Q. Mr. Eddy, you have previously been sworn here, have you not?

A. Yes, sir.

Q. And you have testified that you were an F. B. I. Agent of some years' standing?

A. Yes, sir.

Q. How many was it?

A. Approximately 15 years.

Q. And you are presently assigned to the Buffalo Office?

A. Yes, I am.

Q. And you were so assigned in January of 1957, is that correct?

[fol. 819] Q. Are you acquainted with the defendant, Frank R. Coppola?

A. Yes, I am.

Q. Will you point him out for me?

A. He is the gentleman sitting there in the tan suit with dark hair.

Q. Did there come a time in the month of January, 1957, when you had a conversation with the defendant, Frank Coppola?

A. Yes, sir, I did.

Q. Where and when?

A. At the Buffalo Police Department cell block on the night of January 10th, 1957.

Q. At what time of night?

A. Shortly after 9 P.M.

Q. Who was with you?

A. Special Agent Omar Jenson of our office.

Q. Where exactly in that building did the interview take place?

A. We conducted the interview in the office used by the police officers assigned to the cell block.

Q. How long did the interview last?

A. Until approximately 12:45 A.M.

Q. Were you present in that room during that period of time?

A. Yes, sir, I was.

[fol. 820] Q. All of that time?

A. Yes.

Q. Was Mr. Jenson?

A. Yes, sir.

Q. Personally in the room during the complete period?

A. Yes, sir.

Q. Did anyone else enter the room during the period?

A. Yes, sir, they did.

Q. Who?

A. Mr. Dwyer, the District Attorney of Erie County

entered the room and Mr. Roche who was then Special Agent in charge of our office came in.

Q. How long a time did Mr. Dwyer remain?

A. I would estimate not more than two or three minutes at the most.

Q. How long a time did Mr. Roche remain?

A. I would say approximately the same time, not more than five minutes.

Q. Was there anyone else that entered?

A. Special Agent Jenkins of our office opened the door and asked me to step outside of the room.

Q. He did not enter the room?

A. No, he did not.

Q. Did anyone else other than yourself and Mr. Jenson take part in the interrogation of the defendant Coppola?

[fol. 821] A. No, sir.

Q. Did Mr. Dwyer ask any questions?

A. Yes, sir.

Q. How many?

A. I don't recall how many, because I didn't pay very much attention to what Mr. Dwyer was talking about. It was a matter other than we were discussing.

Q. How long a time would you say Dwyer was in the room?

A. It couldn't have been any more than two or three minutes, possibly five at the most.

Q. During the length of this interview you say it started approximately at 9 o'clock?

A. Shortly after nine o'clock, yes, sir.

Q. And ended what time?

A. Approximately 12:45.

Q. Did the defendant, Frank Coppola, make any requests of you?

A. Yes, sir, he did.

Q. What request did he make?

Mr. Mahoney: This is objected to, your Honor, at this particular time under the McNab ruling and under the Sixth Amendment, and under the Fourteenth Amendment of the Constitution of the United States, and I asked for a [fol. 822] preliminary hearing without the presence of the jury.

JURY EXCUSED

The Court: The jury may be excused.

Mr. Seeberg: May I offer my objection on behalf of the defendant Simmons? I would like to state to the Court I object upon the ground any conversations had by agent Eddy and Mr. Coppola and others not in the presence of this defendant Simmons is not binding upon the defendant Simmons.

The Court: I so instruct the jury.

Mr. Pacini: And that is also true as to the defendant Millio.

The Court: The same is true as to the defendant Millio. The jury will retire, please.

(Jury retired from the court room.)

Cross examination.

By Mr. Mahoney:

Q. Mr. Eddy, prior to the 10th of January of 1957, you knew that the Buffalo office of the Federal Bureau of Investigation was collaborating with the Buffalo Police Department?

Mr. Broughton: I object to it. I object to the word "collaborating".

[fol. 823] Mr. Mahoney: Co-operating or I will change that.

Mr. Broughton: I object to the word "co-operating". May I have a ruling on that, your Honor.

The Court: He may answer that.

Mr. Broughton: This is over my objection.

The Court: I know that.

The Witness: I am not qualified to answer that question, because I was not actively investigating the Liberty Bank case at that time.

Q. So you say you are not qualified, is that it?

A. No, sir, I am not.

Q. Now, on January 10th of 1957, somewhere between the hours of 11 A.M. and 12 noon, you learned that Frank Coppola had been apprehended by the Buffalo Police Department, did you not?

A. Yes, sir, I did.

Q. And you learned that when you were in the office of the Federal Bureau of Investigation which is in this particular building?

A. Yes, sir.

Q. And there did come a time during the 10th of January, 1957, that you left this building on assignment that directed you to see the defendant, Frank Coppola?

[fol. 824] A. Yes, sir.

Q. And that was an assignment that had been given to you by the Agent in charge at that time, Mr. Roche, of the Federal Bureau of Investigation?

A. Yes, it was.

Q. That was approximately at 8 o'clock at night?

A. Approximately, yes, sir.

Q. On June 10th, 1957?

A. Yes, sir.

Q. At the time that you left this building you had no warrant in your possession for the apprehension of Frank Coppola?

A. No, sir, I did not.

Q. And on any of the remaining hours of January 10th, 1957, you never had a warrant for his arrest on any charge of any nature, did you?

A. No, sir, I did not.

Q. And going into the early hours of January 11th, 1957, and throughout that entire day until 4 o'clock in the afternoon, or approximately after that time, you never had a warrant charging Frank Coppola with the violation of any law, whether Federal or State?

A. I have never had a warrant, no, sir.

Q. You never filed an information with the United States Commissioner against Frank Coppola?

[fol. 825] A. I never filed one, no, sir.

Q. At any time?

A. At any time.

Q. When you were over in Police Headquarters on the night of January 10th, 1957, the hour I think was approximately 8 o'clock?

A. Yes, sir.

Q. When you got over to Headquarters on that particular night you knew he was in custody, didn't you?

A. Yes, sir, I did.

Q. Did you know at that particular time that as to Mr. Coppola being in custody that that information had come to the head of the Buffalo office of the Federal Bureau of Investigation from one John Golonbeck who was then Chief of Detectives of the Buffalo Police Department?

A. I didn't know it of my personal knowledge. I only knew what Roche told me.

Q. That was between 11 o'clock and noon time.

A. Mr. Roche told me between 11 and noon time that Frank Coppola was in custody.

Q. When you got over to Police Headquarters on that particular evening, you found Mr. Coppola at that particular time was he in the cell block or was he one that was in the show-up room?

A. He was in the show-up room.

[fol. 826] Q. And because of that particular factor you didn't contact him at that particular time?

A. No, we are not able to contact him there.

Q. Do you know on what floor the Police Headquarters the show-up room is on?

A. Yes, sir, on the fourth floor.

Q. In close proximity to what you referred to as the cell block?

A. Yes.

Q. While that show-up was in progress you went into the office, didn't you?

A. Yes, sir, I did.

Q. For awhile and then came out and stayed in the corridor?

A. Yes, sir.

Q. There came a time when the show-up was completed and Mr. Coppola was sent back to the cell block?

A. Yes, sir.

Q. And you went into the cell block sometime around 9 P.M.?

A. That is correct.

Q. You were in that cell block at 9 P.M., or you had Mr. Coppola brought out from the cell block, is that right?

A. Yes, sir, we did.

Q. You had no warrant for him at that time, did you?

A. No, sir; we did not.

Q. And under what authority did you have Mr. Coppola [fol. 827] brought out from the cell block of the Buffalo Police Department to the room where you wanted to interrogate him?

A. We asked the Chief of Detectives, John Golombeck, if we could interview Frank Coppola and he said "Yes".

Q. At least to that extent he was co-operating with you and you were co-operating with him, is that right?

A. Yes, sir, to that extent.

Q. At that particular time he did. Was he shortly before the interview took place?

A. Yes.

Q. You had some conversation with Frank Coppola, and I think you told Mr. Broughton here in answer to his question that the time expended in there was between the hours of nine o'clock, approximately and 12:45 A.M. of the following morning?

A. Yes, sir.

Q. January 11th?

A. Yes, sir.

Q. Now, at any time during that period of time did you endeavor to arraign him on any charge?

A. No, sir, we had no warrant.

Q. And you did not endeavor to arraign him by merely placing a charge against him, did you?

A. No, sir.

Q. By the way, while you were in that particular office in [fol. 828] the cell block, that by the way is within the Buffalo Police Headquarters and there are bars on the window, isn't that right?

A. Not on the particular window of the room we were in. There are bars on the door leading from the cell block to the exterior corridor.

Q. There are bars on the outside windows facing Franklin?

A. Yes, on the windows.

Q. That is what I asked you. This building, so far as the windows in the cell block are concerned, there are bars on them?

A. Yes, there are.

Q. Even though you were in the office of what is referred

to as the cell block, the windows on the Franklin Street side of the office also have bars?

A. Yes, sir, they do.

Q. At 12:45 or shortly after 12:45 A.M. on January 11th, 1957, you left Police Headquarters, did you not?

A. Yes, sir, I did.

Q. And I take it that you returned to your office here in the Federal Building or U. S. Court House?

A. No, first we obtained some cigarettes and took them back to Frank Coppola and we went to our office.

Q. While you were there during that period from approximately 9 o'clock at night you saw Mr. Jenkins, did you not?

[fol. 829] A. At the Police Headquarters?

Q. Yes.

A. Yes, I did.

Q. You saw Special Agent Elmer Moulin?

A. After the interview commenced at 9 o'clock.

Q. After 9 o'clock until 12:45, or whenever you left on the morning of the 11th?

A. There were two agents I could see in an adjoining room but I do not recall which agents they were, but I spoke to Mr. Jenkins in the hall.

Q. Do I understand you to say in addition two other agents in another room?

A. In an interview room.

Q. Was that Mr. Liddy?

A. I don't recall.

Q. Would you know if it was Mr. Nicholas Obuhanich?

A. Not Mr. Obuhanich.

Q. He is a special agent?

A. Yes, he is.

Q. And Mr. Jenkins?

A. Yes, sir.

Q. And Mr. Liddy is?

A. Yes, sir.

Q. Liddy is the gentleman who was on the stand this morning?

A. Yes, sir.

[fol. 830] Q. After you had gotten your cigarettes, as you just described and returned to Police Headquarters, then you came back to your office in this building, did you not?

A. Yes, sir; I did.

Q. And when you came back to your office you didn't on that particular January 11th return to Buffalo Headquarters, did you?

A. No, sir, I did not return.

Q. As a matter of fact after doing certain chores during the early hours of January 11th, you returned to your home?

A. I went to my home at approximately 3 o'clock on January 11th.

Q. You went home to rest, right?

A. Yes, sir.

Q. By the way, what would you say the hour was when you got back to the office of the Federal Bureau of Investigation in this building? What was it approximately, one o'clock?

A. I would say approximately one or shortly thereafter.

Q. During that January 11th, did you make any demand upon John Golombeck or Lieutenant Harry Klenk, whom I understand is head of the Homicide Squad of the Buffalo Police Department, or any other officer of the Buffalo [fol. 831] Police Department to turn over Frank Coppola to you for arraignment?

A. No, sir, I did not.

Q. You never made any demand of any kind?

A. No, sir.

Q. So you knew when you left Coppola he was still in custody, did you not?

A. He was in the custody of the Buffalo Police, yes, sir.

Q. And you did not, I think you said, you did not make any demand on anyone including the gentleman I mentioned?

A. I made no demand on anyone at that time.

Q. So you never arraigned Coppola on the 11th of January, 1957, did you?

A. No, sir, I did not.

Q. Do you know as to who did arraign him?

A. I know from our records. Not me.

Q. Wasn't it Special Agent Liddy?

A. He was present at the arraignment.

Q. Do you know he was one of the agents that brought

the defendant before the United States Commissioner on January 11th?

A. From personal knowledge I couldn't answer the question.

Q. Do you know as a matter of fact from any record?

A. From the record I believe Mr. Liddy was present.

Q. Do you know, as a matter of fact, the arraignment of [fol. 832] Mr. Coppola took place at 4 P.M. on January 11th, 1957?

A. From personal knowledge, no, sir.

Q. Do you know as a matter of record of the Federal Bureau of Investigation?

A. I don't believe we have that record. I have been told around four.

Q. By other officers connected with the Federal Bureau?

A. That is correct.

Q. Have you also been told that is the first time that any charge was placed against Frank Coppola by any member of the Federal Bureau of Investigation relative to this Liberty Bank episode on October 2nd, 1956—

Mr. Broughton: I object to it unless the witness can answer from knowledge or official record.

The Court: May I have the question?

Mr. Mahoney: I didn't finish it.

The Court: Will you state it?

Q. Either from members of the Federal Bureau of Investigation associated with you, or the records of your Bureau, do you know that the arraignment that took place on January 11th, 1957 at approximately 4 P.M., was the first arraignment that had taken place of Frank Coppola relative to this bank robbery of the Liberty Bank on October 2nd, 1956?

[fol. 833] A. Of my personal knowledge I don't know. I have been told he was arraigned on that date on this charge.

Q. You notice I prefaced my statement, Mr. Eddy from what you were told by members of the F. B. I. or the records of the Federal Bureau?

A. I have seen copies of the complaint, but I have seen no other record with regard to it.

Q. From what you have been told and from the records

of the Bureau, you know it was the first arraignment that was had of Coppola?

A. That is right.

Q. On January 11th, 1957 at 4 P.M.?

A. Yes, sir.

Q. Are you familiar with Rule 5 of the Federal Rules of Criminal Procedure?

Mr. Broughton: I object to that as irrelevant.

The Court: Sustained.

Q. I respectfully except, your Honor. After you left Mr. Coppola on the morning of January 11th, 1957, at approximately one o'clock, did you leave the question of arraignment of Coppola to someone else, that is, to another special agent, of course, in the Federal Bureau of Investigation?

A. Mr. Roche.

Mr. Broughton: I object to it as irrelevant, to the [fol. 834] question of delay of arraignment.

The Court: Sustained.

Q. I respectfully except to your ruling. What was your thought as to arraignment after you left that man there, that is Mr. Coppola, at one o'clock on the morning of January 11th, 1957?

Mr. Broughton: I object to it.

The Court: Sustained.

Q. Did you have any intention of arraigning Mr. Coppola when you left at one o'clock on the morning of January 11th, 1957?

Mr. Broughton: I object to it.

The Court: Sustained.

Mr. Mahoney: If your Honor please, may I be heard on that?

The Court: Yes.

Mr. Mahoney: I do wish to urge upon the Court that, as we both appreciate, there is not only the rule, that is the Federal Rule I refer to, but in addition to it, there is a course of conduct that has been prescribed by the Supreme Court of the United States as to the compliance with that rule by Federal officers, and, in order to show to this Court [fol. 835] this situation the contention of the defendant

Coppola as to lack of arraignment, it is necessary that we have this presented in its chronological order as to what was done by these men when they walked into Police Headquarters and interrogated a man who was in custody and then leaving him abruptly at one A.M., and that is what I wish to develop on this particular hearing.

The Court: Sustained.

Mr. Mahoney: I respectfully except to your ruling. When you came back to the Federal Bureau of Investigation office sometime shortly after one o'clock on January 11th, 1957, did you in collaboration or in contact with Mr. Roche arrange for the arraignment of Mr. Coppola?

The Witness: Mr. Roche was in charge of the investigation and I gave him the facts we had developed.

Q. I asked did you make any arrangements for arraignment?

A. No, sir.

Q. None at all?

[fol. 836] A. I did not.

Q. You weren't concerned with arraignment, were you when you came back from Police Headquarters?

A. Mr. Roche was in charge and I reported to him as he instructed.

Q. I am asking you now, Robert Gordon Eddy, when you came back to the office did you make any arrangements with any other officers of the Federal Bureau of Investigation to arraign Mr. Coppola?

A. No, I did not.

Q. So from shortly after one o'clock when you got back to the office of the Federal Bureau of Investigation on January 11th, 1957 until 4 P.M. of the same day in the afternoon, you had made no arrangements or any contacts for the arraignment of Mr. Coppola?

A. That is incorrect. We did make contact.

Q. I didn't say "we", I said "you".

A. I did.

Q. When?

A. I informed Mr. Roche of the facts of the case and he was handling the matter from there.

Q. I asked about arraignment before a United States Commissioner. Do you know what arraignment means?

A. Yes, sir, I do.

Q. You know arraignment is—

[fol. 837] Mr. Broughton: I object to what an arraignment is.

The Court: I will sustain it and say I will take judicial notice of the official files of this court which show they were arraigned at 4 P.M. on the 11th.

Q. When I am asking you I am talking about Mr. Eddy.

A. Yes, sir.

Q. You yourself made no arrangements with either the U.S. Commissioner Cotter or United States Commissioner Butterfield, or I believe the then United States Commissioner Harding for an arraignment?

A. No, sir, I did not.

Q. You made none at all?

A. No, sir.

Q. Now at the time that you were at Police Headquarters on that particular night, did you have any knowledge as to whether or not Coppola had been fed, or had been given the benefit of drink throughout January 10th of 1957?

Mr. Broughton: I wish to interpose an objection, if you please, Mr. Mahoney, at this time, and request the Court inquire of Mr. Mahoney, as to whether the hearing is for delay of arraignment or involuntariness of admissions or [fol. 838] both so I may know where we are at.

The Court: I understood to be on the delay of arraignment.

Mr. Mahoney: It is, your Honor, and that is on the question of voluntariness but I thought I might save some time by combining both of them.

Mr. Broughton: I have no objection.

Mr. Mahoney: I will follow your suggestion.

The Court: I just want to know what you propose by the examination. You propose both?

Mr. Mahoney: Yes.

Mr. Broughton: I withdraw my objection in view of that.

Q. Did you at that time, Mr. Eddy, when you went in there at 9 o'clock make any inquiry of the defendant as to whether or not he had been fed or had been given drink throughout the day?

A. No, sir, I did not.

Q. And, of course, from your previous testimony here, you certainly knew sometime between 11 and 12 of that morning, that he had been taken into custody?

A. Yes, sir.

Q. And, of course, you felt at the time you went in there at 9 o'clock, it wasn't any of your business as to whether or not he had been fed or had drink during the day?

[fol. 839] Mr. Broughton: I object to what he felt.

The Court: Sustained.

Q. I respectfully except. Did you make any inquiry as to whether or not he had been fed or had had drink during that day?

A. No, sir, I did not.

Mr. Mahoney: That is all, your Honor.

Redirect examination.

By Mr. Broughton:

Q. In whose custody at the time you questioned him was Mr. Coppola?

A. Buffalo Police Department.

Q. By whom was the defendant Coppola arrested on January 10th?

A. From personal knowledge I do not know, but I have been told it was by Detective Chief Golombeck, Detective Harry Klenk, and I believe Detective Stanley Seglit.

Q. Did you or Agent Jenson ever arrest Frank Coppola on January 10th or any other time thereafter?

A. No, sir, we did not.

* * * * * * *

[fol. 841] Omar Jenson called as a witness by and in behalf of the Defendant Coppola, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Mahoney:

Q. Mr. Jenson, you are a member of the Federal Bureau of Investigation, are you not?

A. Yes, sir.

Q. You have been for a number of years?

A. I have for six years, sir, seven years, sir.

Q. And you were a member of the Federal Bureau of Investigation on January 10th of 1957, were you not?

A. Yes, sir.

Q. Prior to January 10th, 1957, did you know the defendant, Frank Coppola?

A. No, sir.

Q. And on the 10th of January, of 1957, did you learn from either your superior, Mr. Roche, or your associates that Mr. Coppola was in custody and that the locale of his custody was the Buffalo Police Department Headquarters at Franklin and Church Streets?

A. Yes, sir.

Q. Approximately what time of day did you learn that?

A. To the best of my recollection, I learned about noon or shortly before noon.

[fol. 842] Q. Shortly before noon on January 10th, 1957, is that right?

A. Yes, sir.

Q. And from that time up to and including 8 o'clock that night, did you have occasion to go to Buffalo Police Headquarters?

A. No, sir, I did not.

Q. At approximately 8 o'clock that night, did you leave the office of the Federal Bureau of Investigation in this U.S. Court House with Gordon Eddy and go to Police Headquarters?

A. Yes, sir.

Q. At or about that particular time did you know that Mr. Jenkins, Mr. Obuhanich and Mr. Liddy, your associates, also went there?

A. Yes, sir.

Q. Did you go over in a body?

A. Yes, sir, we went over at the same time.

Q. How many were there, five or six?

A. I don't know. Five or six.

Q. There was Mr. Eddy, you know that, and there was yourself?

A. Yes, sir.

Q. There was Mr. Jenkins?

A. Yes, sir.
Q. There was Mr. Obuhanich?
A. Yes, sir.
[fol. 843] Q. There was Mr. Liddy?
A. Yes, sir.
Q. And who was the sixth one?
A. I don't recall.
Q. But you do recall six left in a body?
A. There were five or six.
Q. And you and Mr. Eddy were together, were you not?
A. Yes, sir.
Q. And you went to the Buffalo Police Headquarters?
A. Yes, sir.
Q. By the way, when you left the office of the Federal Bureau of Investigation, did you have a warrant for the arrest of Frank Coppola for a violation of Title 18, Section 311-A of the United States Criminal Code?
A. No, sir.
Q. Did you have a warrant for Frank Coppola for any violation whatsoever of the Statutes of the United States?
A. No, sir.
Q. At the time you went over there you knew he was in custody, did you not?
A. Yes, sir.
Q. When you got over there there was a show-up in progress, is that right?
A. Yes, sir.
Q. Do you recall you waited around there for some [fol. 844] length of time?
A. Yes, sir.
Q. And that was approximately an hour, was it not?
A. Yes, sir.
Q. Eventually you and Mr. Eddy went into the cell block on the fourth floor of that building, did you not?
A. Yes, sir.
Q. That cell block is a barred part of the building? Has bars, that is what I am asking you?
A. I don't recall whether there were bars on the office of the cell block or not.
Q. Don't you know that the office is right in what is called the cell block on the fourth floor?
A. Yes, sir. Whether there were bars on the office of the cell block, I don't know.

Q. Do you know that office faces on Franklin Street? Do you or don't you know?

A. I don't know.

Q. You made no observation as to whether or not there were bars there, is that right?

A. Yes, sir.

Q. When you went over there, did you make any personal request to interview Mr. Coppola?

A. No, sir.

Q. You made no request at all?

[fol. 845] A. No, sir.

Q. Do you know as to whether anybody did?

A. No, sir.

Q. You don't know that? No request was made to interview him in your presence at all, is that right?

A. No, sir.

Q. What you did was just walk into the cell block, was it, you and Mr. Eddy?

A. Yes, sir.

Q. When you walked into the cell block you found Mr. Coppola there?

A. Yes, sir.

Q. As a matter of fact, you had to have Mr. Coppola taken out of the line-up and brought into the office of the cell block, isn't that so?

A. As I recall, sir, he was in the cell block and he was in the cell block office when I arrived.

Q. That is your best recollection, is that right?

A. Yes, sir.

Q. By the way, that office of the cell block is an office that is occupied by the police officer of the Buffalo Police Department that is in charge of the cell block, isn't that right?

A. I don't know who occupies the office.

Q. You don't know?

[fol. 846] A. No, sir.

Q. When you went in, as you and Mr. Eddy entered, was there someone in there with Coppola?

A. Yes, sir.

Q. Who was that?

A. He was being questioned. I don't know who was questioning him.

Q. You don't know?

A. No, sir.

Q. You don't know the identity of the questioner at all?

A. Mr. Dwyer, I think.

Q. Don't you know Mr. Dwyer came in later on?

A. Yes, sir, he did come in later on.

Q. Would that refresh your recollection it wasn't Mr. Dwyer that was in there at that time?

A. No, sir, I don't remember.

Q. When you and Mr. Eddy walked in whoever that individual was walked out, is that it?

A. Yes.

Q. You and Mr. Coppola and Mr. Eddy were there alone?

A. Yes, sir.

Q. As I understand that occurred at approximately 9 o'clock, or within a few minutes after?

A. Yes, sir.

Q. At that particular time what query, if any, did you [fol. 847] make of the defendant, Frank Coppola, as to whether or not he had partaken of food that day, or had been given anything to drink?

A. I don't recall whether we made any query.

Q. You don't recall whether you made any such query?

A. That is right.

Q. Would you have any recollection today you did make such an inquiry?

A. No, sir.

Q. What you did was just to sit down and start to question Coppola, is that right?

A. No, sir.

Q. You didn't?

A. No, sir. We first advised him of his rights and told him he need not make a statement. He had the right to an attorney before talking to us.

Q. And then after you told him that, that is when you started to question him?

A. Yes, sir, after we had advised him of his rights we started talking to him.

Q. And then you started questioning him?

A. Yes, sir.

Q. You kept him in that room from shortly after 9 o'clock until approximately 12:54 the following morning?

A. Yes, sir.

[fol. 848] Q. And that is the time, 12:54 A.M. on January 11th, that you released him from the office of the cell block?

A. Yes, sir.

Q. And he was sent back to the cells that are right in that cell block itself?

A. Right.

Q. After that interrogation on the part of you and Eddy of Mr. Coppola you went with Mr. Eddy and got some cigarettes, is that it?

A. Yes, sir.

Q. Pack of Luckies and then came back to your office?

A. Yes, sir.

Q. How long did you remain at your office on the morning of January 11th, 1957?

A. To the best of my recollection I remained about an hour.

Q. You got back here approximately at 1 A.M.?

A. Shortly after 1 A.M.

Q. And you were here until shortly after two?

A. Yes.

Q. Then where did you go, home?

A. Yes.

Q. You went to your home?

A. Yes.

Q. Did you personally, while you were over in headquarters, make any demand upon any police officer over [fol. 849] there, anybody from Chief Golombeck or Lieutenant Klenk, the head of the Homicide Squad, or the man in charge of the cell block, or the night chief of detectives, or anybody under him to release Frank Coppola in your custody, or that of Eddy for the purpose of arraigning him?

A. No, sir.

Q. When you got back here to the office of the Federal Bureau of Investigation on the morning of January 11th, 1957, did you personally make any arrangement for arraigning Mr. Coppola?

A. Yes, sir.

Q. When did you come back to the office of the Federal

Bureau of Investigation after 2:15 A.M. on the morning of January 11th, 1957?

A. At approximately 8 o'clock.

Q. The same morning?

A. Yes, sir.

Q. And, of course, you know on January 10th, 1957, that United States Commissioners Butterfield, Cotter and I am not sure of the late Harry Harding, I don't know the date of his death?

A. Either Cotter or Harding.

Q. You knew that Commissioner Butterfield or either the late Commissioner Harding or Cotter were available during [fol. 850] January 10th, 1957, is that right?

A. Did I know they were available?

Q. You knew they were available during the regular business hours of the day?

A. I did not know that. I assumed they were available.

Q. You knew through your experience they were available throughout the regular business hours of the week?

A. Yes, sir.

Q. You also knew that on the following, January 11th?

A. Yes, sir.

Q. Did you personally make any arrangements for arraignment of Coppola on January 11th, 1957?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Were you present at the time of his arraignment on January 11th, 1957, at 4 o'clock in the afternoon, on the seventh floor of this building in the Marshal's office?

A. I did go to the Marshal's office about that time, but I had no part in the arraignment.

Q. But you did see Mr. Coppola there, did you not?

A. Yes, sir.

Q. You saw he was being arraigned?

A. Yes, sir.

[fol. 851] Q. Do you know whether or not Mr. Coppola had been arraigned on any charge of violating any statute of the United States prior to January 11, 1957, at 4 o'clock, which incident you just stated you saw?

A. Whether he had been arraigned?

Q. On January 10th or 11th, 1957?

A. On any of the charges?

Q. Yes, sir.

A. No, sir, I don't know.

Q. By the way, during this examination of Mr. Coppola between the hours shortly after 9 o'clock and 12:45 or 12:54, whichever is correct, the following morning, did you get any food or get any drink for Mr. Coppola?

A. Yes, sir, I went out in the hall and obtained water for him.

Q. Got him a glass of water?

A. Yes, sir, two or three times.

Q. Anything else?

A. I did get cigarettes for him from Police Headquarters. Mr. Eddy or I, neither one smokes, so I went out in the hall and bummed cigarettes.

Q. When you say "bummed", you mean you requested some officer to give you cigarettes, is that it?

A. Yes.

Q. This office, that is the office of the cell block [illegible] this [fol. 852] is from your observation, as you w[illegible] the cell block off the fourth floor there is a solid iron door with a peep-hole in it?

A. Yes, sir.

Q. It was behind that door that you found Mr. Coppola, isn't that right?

A. In another office.

Q. I am coming to that. When you get in behind that iron door then immediately before you, a little to the right, is this office that you have described?

A. Yes, sir.

Q. And that, by the way—do you know the directions of the lay-out?

A. No, sir, I don't know the directions.

Q. Don't you know west or east or north or south?

A. Yes, sir, but I don't know the position, the directions of the office.

Q. As a matter of fact, you do know on two sides of that office is plain glass comparable to the glass as far as transparency is concerned as any of the windows that are here?

A. Yes, sir.

Q. That is on two sides?

A. Yes, sir.

Q. Those are the two sides, one of which faces the line of [fol. 853] cells, and the other faces a solid iron door that is the entrance into the cell block?

A. Right.

Q. As you sat in that room, in that office, you could see out there, through either one of those sides, one of which actually faces south and one of which faces west. You could see through that transparent glass, could you not?

A. Yes, sir.

Q. You were in there?

A. Yes, sir.

Q. Did you see Officer Liddy there?

A. I don't recall that I saw Officer Liddy.

Q. Do you recall whether you saw Officer Jenkins?

A. No, sir, I do not.

Q. Do you recall whether you saw Special Agent Elmer Moulin?

A. No, sir, I do not.

Q. Do you recall whether or not you saw saw Special Agent Nicholas Obuhanich?

A. No, sir.

Q. Isn't it a fact that you have testified here that Eddy, Moulin, Jenkins, Obuhanich and Liddy, weren't those the members of the Federal Bureau of Investigation that went down to Headquarters with you that night of January 10th? [fol. 854] A. Yes, sir.

Q. You mean to say while you were in there you did not see any of those other agents I mentioned to you?

A. I do recall seeing agents, but I don't recall specifically which ones I saw.

Q. How many agents did you see go past that office in the cell block?

A. Perhaps two or three.

Q. That is your best recollection?

A. Yes, sir.

Q. Do you recall any agent interrupting the questioning by you and Eddy of Mr. Coppola?

A. Yes, sir, later in the interview Mr. Jenkins came to the door and asked to see Mr. Eddy.

Q. And Eddy stepped out, did he?

A. Yes, sir.

Q. How long was Eddy gone?

A. Maybe two or three minutes, two minutes probably.

Mr. Mahoney: That is all.

Cross examination.

By Mr. Broughton:

Q. Mr. Jenson, in whose custody was the defendant, Frank Coppola at that time?

A. In the custody of the Buffalo Police Department.

[fol. 855] Q. Do you know whether or not he had been arrested earlier that day by the Buffalo Police?

A. Yes, sir.

Q. And did you or Agent Eddy arrest the defendant that evening, or at any time following?

A. No, sir.

Q. At any time during the course of the interview did the defendant Coppola ask that he be permitted to leave the room?

A. No, sir.

Q. That is, leave your presence?

A. No, sir.

Q. Did he object to your questioning of him?

A. No, sir.

Q. Did he speak to you freely?

A. Yes, sir.

Q. Did he make any request of you with respect to food?

A. No, sir.

Q. Did he make any complaint to you in the nature of a complaint concerning food?

A. No, sir.

Q. Or the treatment that he had or was receiving at the jail?

A. No, sir.

Q. Were any threats made against him by you?

[fol. 856] A. None whatsoever.

Q. By Mr. Eddy?
A. No, sir.
Q. Were any threats made to him with respect to his wife?
A. No, sir.
Q. Or his mother?
A. No, sir.
Q. Were any promises made to him to induce his statements to you?
A. No, sir.

Mr. Broughton: I have no further questions.
Mr. Mahoney: You say that you knew he had been arrested. That is what you had heard, is that correct?
The Witness: Yes, sir.
Mr. Mahoney: As far as you knew, he was in custody?
The Witness: Yes, sir.
Mr. Mahoney: And that is all you knew, isn't that so?
The Witness: All I knew—
Mr. Mahoney: About Mr. Coppola?
The Witness: Yes, sir.

[fol. 857] HARRY G. KLENK called as a witness by and in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Mahoney:

Q. Where do you live, Mr. Klenk?
A. 1440 Michigan Avenue, Buffalo, New York.
Q. You are a member of the Buffalo Police Department, are you?
A. Yes, sir.
Q. And have been for how long?
A. Approximately 31 years.
Q. You occupy the rank of what at the present time?
A. Lieutenant assigned to homicide.
Q. Are you the head of the Homicide Squad?
A. Yes, sir.

Q. Were you the head of the Homicide Squad on January 10th of 1957?

A. Yes, sir.

Q. On January 10th, 1957, did you take Frank Coppola, the defendant, in the light tan suit into custody on the streets of the City of Buffalo?

A. Yes, sir.

Q. At that particular time had he committed any crime in your presence?

[fol. 858] A. No, sir.

Q. What was he arrested on, suspicion?

A. Yes, sir.

Q. After the apprehension of Mr. Coppola, did you, together with others, drive him in an automobile to Buffalo Police Headquarters?

A. Yes, sir.

Q. And at the time that you arrived at Buffalo Police Headquarters, he wasn't taken to the Detective Bureau or the office of the Homicide Squad, was he?

A. Not at that time, not at first, no, sir.

Q. As a matter of fact, because of the presence of photographers, or newspaper men, he was taken on an elevator and brought directly to the fourth floor of Police Headquarters, wasn't he?

A. Yes, sir.

Q. From there where was he taken? To the cell block?

A. He wasn't put in the cell, he was put in the custody of the guard of the cell block on the fourth floor.

Q. When you say in custody of a guard, that was inside of the cell block?

A. Yes, sir.

Q. That cell block, by the way, the easterly side faces on Franklin Street, does it not?

A. I don't understand.

[fol. 859] Q. Isn't the east side of the cell block facing Franklin Street or faces the Franklin Street side of the New York Telephone Building?

A. That is right.

Q. And the south side faces the Old Cathedral?

A. Right.

Q. The west side is a blank wall with that iron door that leads from the fourth floor corridor into the cell block?

A. That is right.

Q. The north side is a blank wall that borders the other offices of the Buffalo Police Department?

A. That is right.

Q. As to this office in the cell block itself, the windows on the Franklin Street as well as those that face the Old Church are barred?

A. Yes, sir.

Q. You say Coppola was taken into the cell block?

A. Yes, sir.

Q. When he was taken in there you say he was put in charge of a guard? That is a police officer?

A. Yes, sir.

Q. How long did he remain there?

A. I can't say exactly. It wasn't too long a time and was brought downstairs and questioned.

[fol. 860] Q. And when you say "brought downstairs" brought down to where?

A. As I recall, we went into the Chief's office first, the Chief of Detectives.

Q. Yes.

A. And then later we went into the Homicide office.

Q. And that is your office, is it not?

A. Yes, sir.

Q. That is on the second floor on the south side of the building?

A. On the third floor.

Q. Facing Franklin Street?

A. Yes, sir.

Q. As a matter of fact when you took him into Headquarters and took him into the cell block he wasn't booked on any charge, was he?

A. No, sir.

Q. He wasn't booked on any charge throughout that day of January 10th, 1957, was he?

A. He was put on the blotter on the afternoon of the 10th.

Q. He was put on the blotter?

A. That is right.

Q. He wasn't charged with anything at that particular time?

A. No, sir.

Q. In other words, this is what is known in police parlance [fol. 861] as an open charge?

A. Some may call it an open charge. As I recall it, he was put on the blotter sometime after 3 P.M.

Q. When you say put on the police blotter that is merely to record his name and his address, and he was registered in the detective bureau?

A. That is right.

Q. He wasn't charged by anybody in the Police Department until the following day, January 11th, 1957, isn't that correct?

A. That is correct.

Mr. Broughton: I am going to object to it unless we have some information as to what he means by "charged".

The Court: Was there a formal complaint filed of any kind, or any warrant issued?

The Witness: To my knowledge up to that time, no.

Q. Now, Lieutenant, during the day Coppola was interrogated off and on, was he not, by members of the Buffalo Police Department?

A. Yes, by members of the Buffalo Police Department and members of the B. C. I., the State Police.

Q. When you say "B. C. I." you mean Bureau of Criminal Investigation of the New York State Constabulary?

A. Yes, sir, and by the District Attorney's office.

[fol. 862] Q. Anybody else that you can remember?

A. There were some F. B. I. men there, but they didn't question this man in my presence. I saw them there in the Bureau. Whether their business was concerning this man or not, I don't know.

Q. When was that, during the day?

A. That was on the afternoon of the 10th.

Q. The afternoon of January 10th?

A. Right.

Q. You didn't see any interrogation by any members of the F. B. I. at that time of Coppola?

A. No, sir.

Q. As a matter of fact, do you know that there was a show-up at 8 o'clock that night?

A. Yes, sir.

Q. And Mr. Coppola being one of the parties?

A. Yes, sir, I was there.

Q. After that show-up did you leave Headquarters?

A. No, sir.

Q. Did there come a time after that show-up that you went to the cell block in order to see Mr. Coppola?

A. Yes, sir.

Q. At approximately what time of night was that?

A. Well, I went up and had a talk with him and looked his cell block over some time between 8 and 9 o'clock that [fol. 863] night.

Q. Did you go up after 9 o'clock?

A. Yes, sir.

Q. Was that to interrogate him?

A. Yes, sir.

Q. And at that particular time after 9 o'clock that you went up to talk with Mr. Coppola, what was the situation that you found?

A. At that time Coppola, D'Antunono and Senakowski was being questioned by members of the F. B. I.

Q. And where did you see Coppola, do you recall?

A. No, I couldn't say, but the three of them were there. One was inside the closed partition where the guard is stationed, one was outside of that door and one over in another corner and a couple of men talking to each one.

Q. Lieutenant, from the number of times that you have been in and out of that office in the cell block in headquarters, could you tell the Court as to whether or not, when you are in that office of the cell block you could see these individuals, that is, the members of the F. B. I., that were talking to either D'Antunono or Senakowski in the positions you have described?

A. Whether I could see them?

Q. Yes, if you were in the office of the cell block?

[fol. 864] A. Yes, sir.

Q. In other words, on that side of the office of the cell block there is this transparent glass?

A. That is right.

Q. It is that low, that is at least no higher than the waist line of the ordinary man?

A. Yes, sir.

Q. If you were outside of the office of the cell block and looking into the office of the cell block the people that were in the position of these F. B. I. men that were examining Senakowski and D'Antunono could see Coppola and the agents that were in there?

A. That is right.

Q. When you went up there you said you found two members of the F. B. I. examining the three individuals that you have mentioned, D'Antunono, Senakowski and Coppola, so that would be six F. B. I. men examining three individuals?

A. Yes, sir. I wouldn't say examining. What do you mean by "examining"? They apparently were talking to them.

Q. From the observation that you made?

A. Yes, sir.

Q. You went there for what purpose?

A. I went there to interrogate them myself.

Q. And when you found the F. B. I. interrogating them, what did you do?

[fol. 865] A. I went back downstairs.

Q. How long did you remain downstairs?

A. An hour or an hour and a half.

Q. Did you come up again to the cell block?

A. Yes, sir.

Q. When you went in there shortly after 9 o'clock to interrogate them was anybody with you?

A. No, sir. District Attorney Dwyer was in my office.

Q. And when you went back after being downstairs for an hour or an hour and a half was anybody with you at that time?

A. When I went back upstairs?

Q. Yes.

A. No, sir.

Q. When you went back up an hour or an hour and a half later had the conditions changed from what you have described to the Court here? In other words, were the

same six F. B. I. men there and the same three individuals you have named?

A. Let me put it this way. I couldn't identify them. There were two men, whether the same men talking the first time I was up there I wouldn't know whether the same two men talking to each one of these individuals.

Q. In other words, you know there were six, but as to whether or not they were the same six you had seen an [fol. 866] hour and a half before, you couldn't identify them?

A. No, sir.

Q. Did you go up at that time for the purpose of interrogating Coppola?

A. Yes, to bring him down to my office.

Q. When you saw the interrogation was going on by the F. B. I. what did you do?

A. Went back to my office.

Q. How long did you remain in your office at that time?

A. Approximately until 12:30 A.M.

Q. So, if you went up shortly after 9 and went downstairs and went back an hour and a half later, you must have gone up again at 11:30?

A. About that time.

Q. And you were downstairs until about 12:30?

A. Yes.

Q. At that time did you go up again?

A. Yes, sir.

Q. Did you see apparently the same condition, six men of the F. B. I. questioning three individuals that you have mentioned?

A. Yes, sir.

Q. On any of those three occasions were you able to question Coppola?

A. I would say I was able if I cared to take them away [fol. 867] from them. They were our prisoners, but they were visiting headquarters and we showed them the courtesy of letting them talk with them.

Q. In other words, you were co-operating with them?

A. Yes, sir.

Q. Co-operating with them to the extent of turning over

to them the temporary custody of those men to interrogate them?

A. Yes. We could have told any one of the six we were taking the prisoners downstairs and wanted to talk to them.

Q. As a matter of fact, you didn't?

A. We did not.

Q. You co-operated with them and allowed them to continue their questioning?

A. Yes.

Mr. Broughton: I object to his characterization of co-operating.

The Court: Yes.

Q. I respectfully except, your Honor. Now at 12:30 when you went up for the third time, and they were still interrogating them, did you leave?

A. Yes, sir.

Q. Did you make any other attempts that morning of [fol. 868] January 11th to get in touch with Coppola and interrogate him?

A. No, sir.

Q. Now on January 11th, 1957 did you work that day?

A. Yes, sir.

Q. And on that particular day was Coppola arraigned in the City Court of Buffalo?

A. Yes, sir.

Q. And was that at approximately 2 o'clock?

A. Approximately or shortly thereafter.

Q. And after his arraignment over there do you know he was taken into custody by the F. B. I.?

A. Yes, sir.

Q. Now, Mr. Klenk, at any time subsequent to 1? o'clock on the morning of January 10th, 1957, and up to and including the occasion in the City Court of Buffalo, when the members of the F. B. I. took Mr. Coppola into custody, had Mr. Roche, who was then the head of the Buffalo Office of the F. B. I., or any other agent of the F. B. I., ever demanded of you or requested of you that you turn over Coppola to them for the purpose of arraignment?

Mr. Broughton: Object to that whether or not they requested or demanded.

The Court: Sustained.

Mr. Mahoney: If your Honor please, in view of the [fol. 869] cross-examination that took place of Mr. Eddy, which is indicative of the contention of the Government, namely, that he was in the custody of the Buffalo Police, I think I am entitled to show as to what, if anything, was done by the F. B. I. in view of the testimony that is before you at the present time as to what was in their possession from October 2nd, 1956.

The Court: You have done that very fully.

Q. Mr. Klenk, at any time from 10 o'clock on January 10th, 1957, until Coppola was turned over to some member of the Federal Bureau of Investigation on January 11th, 1957, in and around the City Court of Buffalo after 2 o'clock, was any demand or request made upon you by Mr. Roche or any member of the Federal Bureau of Investigation for the custody of Mr. Coppola?

Mr. Broughton: Now, I want to object to that as it again states facts that are not in evidence.

The Court: No, he may answer. Did anybody ask you to release him to them?

The Witness: Yes, sir.

Q. When?

A. At 10 o'clock that morning on January 11th I received [fol. 870] a phone call. I was asked to have the three defendants before a United States Commissioner.

Q. And at that particular time did you refuse to do it?

A. I did not. I called District Attorney Dwyer of Erie County, and I explained the request that was made, and he said—

The Court: You had a conversation?

The Witness: A conversation.

The Court: Then what happened?

The Witness: As a result of that conversation I took the three over to the District Attorney's office.

Q. The District Attorney of Erie County?

A. Yes, sir.

Q. In the Erie County Hall?

A. Yes, sir.

Q. So you didn't refuse to turn over the custody of Coppola to the F. B. I., did you?

Mr. Broughton: I object to that.

The Court: I don't know how you interpret it.

Mr. Broughton: The fact is he did.

The Court: Sustained. You didn't turn him over that morning?

The Witness: No, sir, not until after arraignment in City Court.

[fol. 871] Q. But you personally didn't refuse, did you?

Mr. Broughton: I object to what personally he refused.

The Court: They didn't do it. He already testified to that.

Mr. Mahoney: I still wish to press the question.

The Court: I think it has been answered. Sustained.

Q. I respectfully except to your ruling. Now, Officer, did you go to City Court on January 11th, 1957 with Mr. Coppola in your custody?

A. Well, in my custody and other officers.

Q. And was it in the City Court of Buffalo that an Information was laid charging Mr. Coppola with the violation of a State Statute?

A. Yes, sir.

Q. And that Information was laid either at 2 o'clock or some time after 2 o'clock in the Warrant Clerk's office in the City Court of Buffalo?

A. Yes, sir.

Q. And it was upon that information that Mr. Coppola was arraigned in the City Court of Buffalo?

A. Yes, sir.

Q. Was there any change in his status from the time I asked you about on January 10th of what occurred on January 10th that you held him on an open charge and [fol. 872] you said he wasn't charged until the following day? Was that occurrence in City Court the first time that he was charged with a violation of the State Penal Law?

Mr. Broughton: I object to that.

The Court: If he knows. Do you know, Lieutenant Klenk if that was the first time a charge was placed against him?

The Witness: To my knowledge, yes.

Q. And that would be either at 2 o'clock when Court convened on January 11th, 1957, or within a few minutes after the information was laid in the Warrant Clerk's office, is that right?

A. That is right.

Q. As to what occurred to Coppola during the hours of 10 o'clock on January 10th, 1957 until 12:45 or 12:54 on the following morning of January 11th, 1957 concerning food and drink, you have no knowledge, have you?

A. I know that the prisoners are fed, but I do not see them fed.

Q. You know there is generally a routine custom to feed them, is that right?

A. Yes, sir.

Q. Whether or not Coppola was given food or given water, you wouldn't personally know?

A. No, sir.

[fol. 873] Cross examination.

By Mr. Broughton:

Q. Lieutenant, you personally with Mr. Golonbeck and another police officer made the arrest of the defendant Coppola, did you not?

A. Yes, sir.

Q. That was on the morning of January 10th, 1957?

A. Yes, sir.

Q. Now, at that time, Lieutenant, did you have certain information which caused you to make the arrest of the defendant Coppola?

Mr. Mahoney: That is objected to. I object to it, your Honor, it is not competent, relevant, material, and it is not in compliance with the provisions of the Penal Law of the State of New York.

The Court: Sustained.

Mr. Broughton: Just a moment, your Honor. I want to be heard on that matter before the ruling. First of all the contention of Mr. Mahoney is, as I understand it, that the Buffalo Police arrested Frank Coppola at the behest of the Federal Bureau of Investigation.

Mr. Mahoney: I never asserted that.

[fol. 874] Mr. Broughton: I am entitled to show that the arrest made of the defendant Coppola was made with respect to an Information concerning a state charge and show the arrest was the independent act of the Buffalo Police Department, and they were not acting for the F. B. I.

The Court: I don't see you need that. They were in the custody of the Buffalo Police Department some time after 10 o'clock that day.

Mr. Broughton: Do I understand you do not wish me to follow that line of questioning?

The Court: You can. I sustained that objection.

Mr. Broughton: The basis is it is not pursuant to the Penal Law of the State of New York? That really has nothing to do with the admissibility. The question is whether a good arrest and that would depend on what information the police officer had.

The Court: Let's get it this way. Did you have information from any Federal officer that caused the arrest on the morning of the 10th?

[fol. 875] The Witness: Up to that time I hadn't talked to any Federal officer.

Q. However, you had a conversation, hadn't you, with Mr. District Attorney Dwyer?

A. Yes, sir.

Q. And without relating the conversation, isn't it the fact that the information which he gave you dealt with the commission of an offense against the Penal Laws of the State of New York?

Mr. Mahoney: I object to that.

The Court: Sustained.

Q. I want to call your attention to one part of the testimony and that is with respect to this so-called booking. Isn't it a fact that people are arrested and brought to

jail there and there comes a time when their name and residence and time of their arrest are entered on the record kept in Police Headquarters?

A. Yes, sir.

Q. Isn't it also a fact that at that time an entry is made upon that record to show the charge upon which they are held?

A. Yes, sir.

Q. That is not a formal complaint, is it, in the sense we have in City Court?

A. No, sir, there is no Information.

[fol. 876] Q. This record indicates the reason why the Police Department of the City of Buffalo is holding this man for the City Court? Am I correct?

A. Yes, sir.

Q. And that is done perhaps on the following day the prisoner is taken before City Court upon an Information placed against him?

A. That is right.

Q. I believe you said some time after 3 P.M. on the afternoon of January 10th, a charge was filed against the defendant Coppola, at least in the sense that an entry was made upon the blotter?

A. That is right. That is what we call booked, putting his name on the blotter.

Q. Is it not a fact that charges on which he was arraigned at that time was a violation of the State Law?

Mr. Mahoney: I object to that.

The Court: He may answer.

Mr. Mahoney: Exception.

The Court: Isn't it a fact when you booked him, you booked him only on the State violation, whatever it was?

The Witness: Yes, sir.

Q. Now, Lieutenant, you have said that you did not interrupt the questioning of the F. B. I.?

[fol. 877] A. I did not.

Q. I believe you said that is a courtesy which is extended by one police organization to another?

A. Yes, sir.

Q. You permitted these prisoners to be questioned not

only by the F. B. I., but the B. C. I. of the State Police? Am I correct?

A. Yes, sir.

Q. Are you, yourself, personally familiar with the delivery of custody of the defendant Coppola to the Federal authorities?

A. Am I what?

Q. Are you personally familiar with the actual transfer of his custody?

A. Yes, sir.

Q. Isn't it a fact he was delivered into the custody of the United States Marshal rather than the Federal Bureau of Investigation?

A. He was taken to Mr. Harding's office and our commitments we receive from the Judge in City Court were turned over to the U. S. Marshal's in Mr. Harding's office.

Q. He then became a prisoner of the United States?

Mr. Mahoney: I object to that.

Q. I will withdraw that. His custody was at that time then transferred by you to the United States Marshal?

A. Yes, sir.

[fol. 878] Mr. Broughton: I have no further questions.

Redirect examination.

By Mr. Mahoney:

Q. As a matter of fact, Mr. Klenk, in the ordinary routine of police work, when a man is brought into Police Headquarters on suspicion what you mean by booking is his name and address is entered, isn't that so?

A. Yes, sir.

Q. And because of the presence of photographers and newspaper men on the morning of January 10th, 1957, this policy wasn't followed as to Coppola, but he was taken right to the fourth floor on the elevator, isn't that right?

A. Yes, sir.

Q. Wasn't it later in the afternoon of the same day he was booked as you have testified to, namely, that his name and address was placed on the blotter of the Detective Bureau on the third floor?

A. Yes, sir.

Q. So this booking you refer to was deferred, because you wanted to circumvent the Press and the photographers?

A. Yes, sir. We didn't want the television operating or have pictures taken.

Q. Was there a television outfit at Headquarters?

A. I think so.

[fol. 879] Q. Where were they, in the lobby or outside?

The Court: What has that got to do with the delay of arraignment? There is some limit to this.

Mr. Mahoney: It will show some co-operation as to which I am going to point out several cases to the Court after this is over.

The Court: I don't know what WGR or WBEN or any other television station has to do with it.

Q. Let us get down to this feature. You say they were taken up on the fourth floor so they weren't booked in the Detective Bureau on the third?

A. That is right.

Q. It was later in the day of the same day on the occasion when they were either taken to your office or the Chief's office for interrogation that they were booked by the entry of their name and address on the blotter?

A. That is right.

Q. And that is what you mean by booking?

A. Yes, sir.

The Court: Were any members of the B. C. I. in that arrest with members of the Buffalo Police Department?

The Witness: Not on the arrest, no, sir.

[fol. 880] FRANK LIDDY called as a witness by and in behalf of the defense, been previously sworn, testified as follows:

Direct examination.

By Mr. Mahoney:

Q. Mr. Liddy, on January 10th, 1957, you were at the office of the Federal Bureau of Investigation in this building, were you not?

A. Yes, sir.

Q. You reported at approximately 8:30 or so in the morning?

A. 8:30 or before, yes.

Q. And on that particular morning, did you learn of the fact that Frank Coppola had been apprehended by the Buffalo Police Department?

A. Some time that morning I learned of it.

Q. That would be shortly before 8 o'clock, or up to the noon hour?

A. It would have been closer to the noon hour.

Q. After learning of that particular fact in the office of the Federal Bureau of Investigation, did you go to the Buffalo Police Headquarters at any time prior to 8 P.M. that night?

A. Yes, sir, just before 8 P.M.

Q. Were you in the Buffalo Police Department at any time during the afternoon of January 10th?

[fol. 881] A. No, sir, not that I recall.

Q. You said not that you recall. Will you just sort of check your recollection and ascertain if you do recall having been there in the afternoon?

A. I recall I was not there.

Q. And at 8 o'clock at night you went over with whom?

A. I went over to the Buffalo Police Headquarters with Special Agent Richard Flannigan.

Q. When you got over there at approximately 9 o'clock, or therealbouts, did you go into the cell block at Police Headquarters?

A. Yes, sir.

Q. At that particular time you were in the office of the cell block, were you?

A. No, sir.

Q. You and Mr. Flannigan were outside the office?

A. Yes, sir.

The Court: Can it not be stipulated all these six agents were there that evening and Mr. Roche was in charge? Isn't that the fact?

Mr. Mahoney: The only suggestion I have to make, through the medium of this witness who just took the stand, this is the first time I have learned Dick Flannigan

[fol. 882] was over there. That is another one of the men that interrogated.

The Court: On the involuntariness of the confession I do not see any reason for examining all these F. B. I. men that were there, but you can have the one in charge. That would be the point, rather than going all over the detail with each agent as to whether the cell block has some window.

Mr. Mahoney: If your Honor please, the question that defense counsel is making on behalf of Coppola is relative to this psychological oppression that doesn't occur only through words of the mouth, but also occurs from the presence of individuals that are in close proximity, these gentlemen that were outside of the office that particular night while Agents Eddy and Jenkins were interrogating inside and could be observed through the transparent glass.

The Court: We have that before us. Why do we need [fol. 883] accumulative testimony on that point? We have the exact picture. Now, if we get the agent that was in charge who dealt with the State authorities we would have the complete picture.

Mr. Mahoney: I want to find out from each of these individuals whether or not they made any personal demand.

The Court: Let us concede none of them did.

Q. Did you at any time make a personal demand for custody of Frank Coppola?

A. No, sir.

Q. Did Richard Flannigan, who was with you, on that particular night, make any personal demand?

A. No, sir.

Q. Did you make any arrangements for arraignment of Frank Coppola on January 10th, 1957?

A. Not on the 10th.

Q. On January 10th you didn't?

A. That is right.

Q. You knew the U. S. Commissioners were available throughout the day, did you not?

A. I had no idea whether they were available or not.

Q. As a result of your experience with the Federal Bureau of Investigation—how many years has that been?

[fol. 884] A. Approximately seven years.

Q. At any time during the ordinary business hours of the day U. S. Commissioners are available here in Buffalo?

A. Yes.

Q. January 10th is no different.

A. I have no idea whether available that day. I didn't know.

Q. Did you attempt to find out?

A. No.

Q. On January 11th did you attempt?

A. I was over in the Commissioner's office.

Q. When you say "in the Commissioner's office", isn't it a fact that the office was in the Marshal's office on the seventh floor of this building?

A. I was in the Commissioner's office in the Ellicott Square Building.

Q. What time?

A. On the morning of the 11th.

The Court: It has been testified to they tried to get an arraignment at 11 o'clock that morning.

Q. Is the initial J. yours, Mr. Liddy?

A. Yes, sir.

Q. Frank J., Jr.?

A. That is right.

[fol. 885] Q. Will the Court take judicial notice of this without my marking it as an exhibit?

The Court: I certainly will, any official records of the Court.

Q. I show you this Information against the defendant Frank Richard Coppola, and call your attention, Mr. Liddy, to the signature there, Frank J. Liddy, Jr., and I would assume that is you?

A. Yes, sir.

Q. You signed that before Mr. Butterfield?

A. Yes, sir.

Q. And this is wherein on the 11th of January, 1957, you charged Mr. Coppola with a violation of Title 18, Section 2113, is that right?

A. Yes, sir.

Q. And on that particular day, Mr. Eddy wasn't with you, was he?

A. No, sir.

Q. Had you had access to the reports of the Federal Bureau of Investigation as to the incident of October 2nd, 1956?

A. I have access to those.

Q. You were familiar with it, were you?

A. Certain phases of it, yes, sir.

Q. At the time you swore to this you were familiar with [fol. 886] certain phases?

A. Yes, sir.

Q. I want to call your attention to this. Where did you get the information that Frank Coppola entered the Linwood Branch of the Liberty Bank?

Mr. Broughton: I object to that.

The Court: Sustained.

Mr. Mahoney: This now goes to the credibility and Mr. Broughton has been talking about credibility here.

The Court: This is not before the jury and we are not going into the arrest by the Federal Agents after the State Agents at this time. It has nothing to do with voluntariness.

Q. Mr. Liddy, this Information that I showed to you that you swore to on January 11th, was that sworn to on the morning of January 11th, 1957?

A. Yes, sir.

Q. In the morning?

A. Yes, sir.

Q. That was the approximate time that Mr. Coppola was arraigned in City Court?

A. I don't know when he was arraigned in City Court. I have no knowledge of it.

[fol. 887] Q. Were you present when he was arraigned before the U.S. Commissioner?

A. Yes.

Q. Didn't that occur at 4 o'clock on January 11th, 1957?

A. That he was arraigned?

Q. Yes, sir.

A. Yes, sir.

Q. Now I ask you as to whether or not you can tell the Court where you got the information from that you swore to that Coppola entered the bank?

Mr. Broughton: I object to that. The Grand Jury indicted this man and you can't go behind that.

The Court: Sustained.

Mr. Mahoney: I respectfully except to your Honor's ruling.

* * * * * *

[fol. 888] Cross examination.

Mr. Mahoney: At this particular time I merely call this [fol. 889] to the attention of the Court that I have Elmer Moulin, Frank Jenkins and Nicholas Obuhanich to call, so I have four more witnesses.

The Court: I asked you to call Mr. Roche. I see no reason for the other men being called in this proceeding, but I would like to hear Mr. Roche.

Mr. Mahoney: I do not see any reason why I should have to call him, your Honor. I am not going to call him out of order. I noticed that Mr. Mason walked out to get him. I don't know what authority Mason has to call him.

The Court: Because I want him here.

Mr. Mahoney: Do I understand the Court is putting him on?

The Court: I want to hear Mr. Roche.

Mr. Mahoney: May the record show in reply to your inquiry I stated I was not calling Mr. Roche at this time on behalf of my defendant here, under Rule 5, and under Article 6 and Article 14 of the Constitution.

The Court: I state in the record if counsel wishes to [fol. 890] examine Mr. Roche he will examine him now on the question of delay of arraignment and on the question of voluntariness, and the Court has some discretion in the course of the testimony, and the Court directs if you desire to question Mr. Roche about it you do it now. If you do not wish to question Mr. Roche—

Mr. Mahoney: That is our wish.

Mr. Broughton: If you wish to hear the testimony of Mr. Roche, I will call him as my own witness.

The Court: I do.

JOHN A. ROCHE called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Examination.

By the Court:

Q. Mr. Roche, you were Special Agent in charge of the Buffalo Office during the period October 2nd, 1956 through what period in 1957?

A. March 29th, 1957.

[fol. 891] Q. You were so engaged on January 10th and 11th, 1957, were you?

A. I was, yes, sir.

Q. And you had charge of the agents who were investigating the Liberty Bank case as to the defendants now on trial, did you?

A. I did, sir.

Q. Were you present at the investigation or the questioning of these defendants at Police Headquarters on the evening of January 10th between 9 and 12:45?

A. I was.

Q. And at that time there had been no arraignment of the defendants or any of them on any Federal charge, had there?

A. No, there had not.

Q. Did you request any police officer of the Buffalo Police Department, or any other individual having custody, in the Sheriff's Department or the Police Department, of the defendants or any of them, to surrender them to your department on January 10th for the purpose of arraigning them?

A. No, I did not.

Q. Did you on January 11th make any such request?

A. Yes, I did, sir.

Q. When and to whom?

[fol. 892] A. I made the request to John Golombeck, the Chief of Detectives on the morning of January 11th, subsequent to obtaining an authority from the United States Attorney to file a complaint and obtain a warrant for their arrest.

Q. After you made that request to Golombeck; what occurred?

A. I made arrangements with Mr. Golombeck to bring the defendants before the United States Commissioner Butterfield at 11 o'clock on the morning of the 11th.

Q. Were they brought before him at that time?

A. No, they were not.

Q. When was the defendant Coppola delivered to your custody?

A. Between 4 and 5 P.M., on the afternoon of the 11th.

Q. Were you in the City Court of Buffalo on the afternoon of that day after 2 P.M.?

A. No, sir.

Q. Where did you see the defendant Coppola in custody at the time you mentioned?

A. I saw him in custody about 1 o'clock on the morning of the 11th, and then subsequently I saw him in custody of the Police Department when he was brought into this building for arraignment between 4 and 5 o'clock.

Q. Was he then in the custody of the Buffalo Police Department or the Marshal at 4 o'clock the afternoon of the [fol. 893] 11th?

A. He was in custody of the Buffalo Police Department. The Marshal had gone over to the State Court, as I understand it.

Q. Were you present at the time of the arraignment?

A. No, sir, I was not.

Q. Did you have anything to do with furnishing them or seeing them furnished with food or drink on the 10th?

A. No, sir.

Q. Did you make any gestures towards them or any threatening indications through a window while they were being questioned by any of your agents?

A. No, I did not.

Q. Did you interrupt the questioning of your agents or did you question Mr. Coppola?

A. No, sir.

Q. Did you have conversations with District Attorney Dwyer after 11 A.M. on the 11th regarding custody?

A. Yes, I did. I went to the District Attorney's office.

Q. You had a conference?

A. Yes, sir.

Q. Did that result in their being delivered to you?

A. Yes, sir.

Q. At what time?

A. Between 4 and 5 o'clock.

[fol. 894] Q. That was the first time?

A. Yes.

Q. So you talked with Golombeck in the morning, and you talked with District Attorney Dwyer?

A. Yes, sir.

Q. Did you talk with anybody else in the Police Department regarding the arraignment on the 11th?

A. No, I did not.

Q. Did you have any conversation with Lieutenant Klenk?

A. The conversation with Lieutenant Klenk was in his presence, but actually the conversation was directed to Chief Golombeck and Mr. Dwyer.

The Court: Are there any other questions of Mr. Roche?

Direct examination.

By Mr. Broughton:

Q. Did there come a time in January, 1957, Mr. Roche, when in the course of your duties you communicated with some local authorities in the City of Buffalo with respect to the defendant Coppola and others?

Mr. Mahoney: That is objected to as hearsay and incompetent.

Mr. Broughton: I think I asked if he had a conversation. I just asked if there was a conversation.

[fol. 895] The Court: "Yes" or "No".

The Witness: Yes.

The Court: For the record the objection is overruled and the defendant Coppola may have an exception.

Q. I will go to the next step. That conversation that you had was with respect to a matter not within your jurisdiction?

Mr. Mahoney: That is objected to on the same grounds and also as leading.

Mr. Broughton: He has raised the issue of whether or not the Buffalo Police Department arrested this man at the behest of the F. B. I. Now when the Government seeks to introduce in evidence from the very witness that would make such arrangement, if it existed, we are met with an objection it is hearsay.

Mr. Mahoney: I want to meet that head on, because I think you certainly have within your grasp the fact I do not claim that the Buffalo Police made an arrest at the behest of the F. B. I.

The Court: I have no such recollection.

Mr. Mahoney: He just said to you that is the justification [fol. 896] for the question.

The Court: I will sustain your objection.

Mr. Broughton: With that on the record I have no further questions.

Cross examination.

By Mr. Mahoney:

Q. Mr. Roche, you were in charge of the Buffalo office, weren't you?

A. Yes, sir.

Q. And you were in charge of the Buffalo office on October 2nd, 1956?

A. I was.

Q. And you were up until January 10th, 1957? At least on that date you were still here?

A. Yes, sir.

Q. Of course, what information and records that come to you relative to the events of October 2nd was through the medium of the agents which are made available to you?

A. That is correct.

Q. So that on January 1st of 1957, as well as up to and including January 10th, 1957, your office had the benefit of the investigation that was made concerning the events of October 2nd, 1956 and the statements that were allegedly made after that date in November and December of the [fol. 897] same year?

A. That is right.

Q. And that included what was reported to the Bureau by this William Buyers, the III, the Deputy Sheriff?

A. That is right.

Q. That was in your possession through November and December, 1956?

A. That is right.

Q. And it was in your possession on January 10th, 1957, throughout the entire day?

A. Yes.

By the Court:

Q. May I inquire, sir, as of January 10th, the following F. B. I. Agents were under your control as agent in charge at Buffalo and questioned these gentlemen, including the defendant Coppola on the evening of the 10th, Agent Liddy, Nicholas Obuhanich, Frank Jenkins, Omar Jenson, Robert Eddy and Elmer Moulin?

A. Yes, they were.

Q. Agent Eddy and Agent Jenkins interviewed Coppola?

A. Yes, sir.

Q. At the time you went into Police Headquarters did you notice any of those gentlemen making any gestures, grimaces or facial contortions towards the defendant?

A. Absolutely not.

[fol. 898] Q. Would that include others than Coppola?

A. That would.

Q. Was there a walking back and forth or running back and forth before the windows of the office in which Coppola was being interviewed by your agents in your presence?

A. There was not.

Mr. Mahoney: I think you just overlooked one agent, and that is Richard Flannigan.

The Court: Was Richard Flannigan there?

The Witness: Yes, sir, he was.

The Court: Was anyone else?

The Witness: No, sir.

Recross examination.

By Mr. Mahoney:

Q. When you were in Police Headquarters on January 10th, 1957, you were only there for a few minutes in the cell block?

A. I was in the cell block at Police Headquarters from approximately 9 o'clock to 12:30, or a quarter to one.

Q. Constantly in the cell block?

A. No, I was down in the Detective Bureau for awhile.

Q. How long did you spend in the cell block?

A. I was approximately 60 or 75 per cent of my time.

Q. And 9 to 12:30 would be three and one-half hours?

[fol. 899] A. That is right.

Q. And 60 per cent of that would be two and a quarter hours in the cell block?

A. Yes.

Q. At the particular time you were in the cell block you did see these agents Eddy, Jenson, Moulin, Jenkins, Obuhanich and Flannigan and Liddy in there, did you not?

A. I saw them at various times and at various places within the cell block, yes.

Q. Would you have any recollection as to the size of that particular cell block where you saw these agents?

A. I think so, yes.

Q. What would it be, 12 by 12?

A. You mean to one corner of the room? Where they were located?

Q. Yes.

A. No, I would say a little bit larger than that.

Q. What is your best judgment?

A. Probably about 14 by 16. This is the room you are talking about Coppola was in?

Q. 14 by 16?

A. I would say that.

Q. The space outside that is smaller before you enter into the cells themselves?

A. I don't know what you are driving at.

[fol. 900] Q. Do you know the place outside of the cell block?

A. The corridor you are talking about?

Q. No, I am not talking about the corridor. There is a fourth floor corridor?

A. That is right.

Q. And you walked through this iron door?

A. Yes, sir.

Q. And you walked into the cell block itself?

A. My recollection is there is a small corridor, so to speak, after you get through that iron door.

Q. Is that before you get into the cell block?

A. Yes, sir.

Q. If you call it a corridor what was the size of that?

A. I would say about three feet wide, and to the best of my recollection, it is all the way to the polygraph room in that area.

Q. Isn't it a fact that the agents were outside of the office of the cell block with the exception of Messrs. Eddy and Jenson who were in the office?

A. During the course of their interview with the other prisoners?

Q. Yes.

A. No.

Q. Where were they?

A. In adjoining rooms.

[fol. 901] Q. Is that your recollection?

A. Yes.

* * * * * * *

[fol. 902] FRANK R. COPPOLA called as a witness by and in behalf of the defense, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Mahoney:

Q. Mr. Coppola, your address at the present time is 10 Delaware Avenue, is it not?

A. Yes, sir, it is.

Q. You are an inmate of the Erie County Jail?

A. Yes, sir.

Q. You have been since approximately January 11th, 1957, is that right?

A. That is right.

Q. And on the evening of January 10th, 1957, do you recall of seeing Gordon Eddy, the gentleman, the third in this line of gentlemen right here, and a Mr. Jenson, who was on the stand a few minutes ago?

A. Yes, sir.

Q. Where did you see them at Headquarters?

A. The first time I seen them was in the corridor.

Q. In the corridor?

A. In the corridor directly in front of the office where [fol. 903] they interrogated me.

Q. Did you see them after you had seen them in the corridor?

A. No, sir, they took me from that corridor, I just got off the police line-up and Dwyer was talking to me, Mr. District Attorney Dwyer, and I couldn't tell you the number of people around there, but finally I was led into the office by Mr. Eddy and Mr. Jenson and the interrogation started at that point.

Q. At that particular time?

A. Yes, sir.

Q. Did you hear Mr. Eddy's testimony to the effect that he started to talk to you shortly after 9 o'clock and he concluded about 12:45 and left the office at 12:54 the following morning?

A. Yes, I heard that testimony.

Q. Have you any recollection as to whether or not that was the time you were in that office of the cell block with those two gentlemen?

A. Well, I was in there during those hours, after those hours and before those hours with Mr. Eddy and with Mr. Jenson and in another room, because the midnight shift came on and I asked Mr. Eddy and Mr. Jenson to take me out of that room, because they had to use for their business.

Q. Where did they take you?

[fol. 904] A. They took me from that office to another room with a solid door. I believe it had one window. A

locker room with something like a stretcher for carrying bodies, or it appeared so to me.

Q. Had you anything to eat or drink throughout January 10th, 1957?

A. No, sir, I hadn't had anything except water which was given me on my request by Mr. Jenson. I would say 12 o'clock was my first request for water and during that whole day no kind of food brought to us with the exception of sandwiches I requested to eat and had to throw out because I couldn't eat it, because of its condition.

Q. At any time while Mr. Eddy and Mr. Jenson were there, were you ever apprised of the fact that you were entitled to an attorney and you didn't have to make a statement?

A. Mr. Mahoney—

Q. Just answer the question.

A. No, sir, I had never been asked that by any member of the F. B. I. in my lifetime.

* * * * * * *

[fol. 912]

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Mahoney: I have an argument I wish to make to the Court, and I have with me either six or eight volumes of the Supreme Court of the United States and the content of them I would like to present to the Court in my argument as to the decision that you will make upon this particular matter, several of which concern themselves with the use made by the Federal Bureau of Investigation of evidence that they have secured through the medium of officers of the State.

The Court: Can you give me the citations?

Mr. Mahoney: I can give the citations, but I do not want to be deprived of my argument.

[fol. 913] The Court: If you want to argue, go ahead.

Mr. Mahoney: There are some of these you are undoubtedly familiar with. The McNabb case 318 U.S. 332.

The Court: I have it.

Mr. Mahoney: Anderson and others against United States, 318 U.S. 350.

The Court: Yes.

Mr. Mahoney: United States against Mitchell, 322 U.S. 65, Upshaw against U.S. 335 U.S. 420, U.S. against Carignan, 342 U.S. 36, Rettig against United States, 239 Fed. 2d, 916. In connection with that United States against Watson 146 Fed. Sup. 258. U.S. vs. Skeeters, 122 Fed. Sup. 52, U.S. against Hoffman, 137 Fed. 2d, 416 and U.S. against Levington, 193 Fed. 2d, 848. Those are the citations that are in support of the motion it is my intention to make, but I do not feel as though I am in a position to make it and discuss these with you at the present time.

The Court: We will recess until 9:45 tomorrow morning.

(Whereupon an adjournment was taken until November 28th, 1957, at 9:45 A.M.)

[fol. 914] Proceedings of November 28th, 1957, at 9:45 o'clock A.M.

Appearances: Same as before noted.

(Jury not present.)

Mr. Mahoney: If your Honor please, we have submitted the proof of the defendant, Frank Coppola in support of the preliminary hearing which was granted by the Court at my request.

The Court: That completes the evidence, does it?

Mr. Mahoney: Yes, your Honor.

The Court: I want to express my appreciation in receiving your citations and I have gone over them last night and this morning, and on the Second Circuit interpretation of McNabb and Upshaw, and on the testimony of the defendant, Frank Coppola, I find that there was nothing involuntary or force used, either actual or psychological with this gentleman, and that the mere delay in arraignment is not contemplated as sufficient to bar the statement unless there is some coercion or act to be [fol. 915] inferred from the testimony. I decided this as a matter for the Court outside of the presence of the

jury and on the judicial finding that the statement is voluntary and not involuntary and the defendant Coppola may have an exception.

Mr. Mahoney: Just for the purpose of the record and in view of the fact that the preliminary hearing was requested on more than one ground, could the record show, I care not whether prior to the time, but just for the purpose of the record that a motion was made by the counsel for the defendant at that time under the first ground, namely, that the statement was not voluntary, and the same was secured through the medium of psychological coercion of incarcerating Mr. Coppola in the Buffalo Police Headquarters throughout the 10th of January and the morning of the 11th of January, 1957. That is one basis, your Honor, relative to the psychological oppression, and [fol. 916] inasmuch as I also moved for a preliminary hearing, pursuant to a violation of Rule 5 of the Federal Rules of Criminal Procedure, namely, that there was an unnecessary delay in the arraignment, and I have cited to the Court in support of that Anderson against the United States, as well as the United States against Skeeters wherein it was held in both instances, rather one instance, where the Deputy Sheriffs had made the arrest and had custody and the interrogation took place by a member of the F. B. I. while in the custody of the Sheriff, and in the Rettig case that the Chief of Police had made the arrest and had custody of the defendant at the time he was interrogated by the F. B. I., and I specifically call the holdings of those two particular cases to the attention of the Court and at the same time my motion is any oral statement or any written statement that may have been [fol. 917] taken from the defendant, Frank Coppola, on the night of January 10th, 1957, and the morning of January 11th, 1957, be declared in the first instance involuntary, and, secondly, that there was an unnecessary delay in the arraignment of the defendant. I just wanted that on the record.

The Court: On the basis of Rettig vs. U.S. 239 Fed. 2d, 916, and the United States vs. Mitchell, and the determination in the McNabb and Upshaw cases, and the holding in the United States against Hoffman, the motion as to

voluntariness and as to delay in arraignment under Rule 5-A are denied, and the defendant Coppola may have an exception.

Mr. Mahoney: Thank you, your Honor.

Mr. Broughton: I have this matter I wish to take up with the Court so I understand completely the Court's ruling. The Court has ruled that the admissions of the defendant, Frank R. Coppola, are not involuntary, but [fol. 918] the fact of the question of involuntariness itself may be submitted to the jury in your Honor's charge.

The Court: I have decided the question of law as to an involuntary or voluntary statement, and we will submit the question of fact to the jury. This is in the absence of the jury and is not to be submitted to them. We do not submit to them the delay in arraignment.

Mr. Broughton: I want to clear that up. You have found there was no delay.

The Court: There was no delay in the arraignment or a vfolation of the Constitution as raised under Rule 5-A, or any other rule of the Constitution of the United States.

Mr. Broughton: May I point out to your Honor at this time, in the argument of yesterday, I believe I am correct in this, that Mr. Mahoney raised an objection when I was questioning Mr. Roche about a conversation Mr. Roche may have had with some local authority, and, at that time Mr. Mahoney stated it was not his claim that the arrest [fol. 919] was made by the local authorities at the behest of the F. B. I. I understood that to be the statement.

Mr. Mahoney: That is the substance of it.

Mr. Broughton: May I ask your Honor, if you would hold that you find as a matter of fact no working agreement existing between the F. B. I. and the Buffalo Police Department with respect to the Buffalo Police arresting this man or men and holding them so the F. B. I. could question them.

The Court: That was a necessary prelude to the finding. Will you call the jury, please?

(Jury return to the jury box.)

ROBERT GORDON EDDY recalled as a witness by and in behalf of the Government, having been previously sworn, testified as follows:

Direct examination.

By Mr. Broughton:

Q. Mr. Eddy, just to bring us up to date, I believe that yesterday you testified with respect to your own employ-
[fol. 920] ment with the Federal Bureau of Investigation?

A. Yes, sir.

Q. And that you had visited the Headquarters of the Buffalo Police Department during the evening of January 10th of 1957, and that while there you interviewed the defendant, Frank R. Coppola, commencing at about 9 o'clock in the evening and continuing thereafter until approximately 12:45 o'clock. Is that basically correct?

A. Yes, sir.

Q. That accompanying you was Special Agent Omar Jenson of the F. B. I., and that you and Mr. Jenson remained in the room with the defendant, Frank Coppola, during the hours which I have described except for a moment when you stepped out in the hall to speak to Agent Jenkins?

A. That is correct.

Q. And during the course of that evening, two other people entered the room—

Mr. Mahoney: I object to this. This is a narration on the part of Mr. Broughton.

The Court: Yes, let us ask the question.

Q. This was to save time. On that particular point did someone else enter the room during the conversation?

A. Yes, sir, during the course of the evening others entered the room.

[fol. 921] Q. Who were they?

A. Mr. Dwyer, District Attorney of Erie County, and Mr. Roche, Special Agent in charge of our office.

Q. How long did Mr. Dwyer remain?

A. I would estimate two or three minutes or a little bit longer.

Q. And Mr. Roche?

A. Approximately the same length of time.

Q. Did there come a time, Mr. Eddy, in the course of the conversations when the subject matter of the Linwood-North Branch of the Liberty Bank came up?

A. Yes, sir, it did.

Q. Will you tell me what was said by the defendant, Frank R. Coppola, with respect to that subject matter?

Mr. Pacini: In behalf of the defendant Millio, I wish to object to any testimony that this gentleman may give as to any conversations had on the 10th day of January, 1957, between himself and anyone else concerning the defendant, Frank Coppola, upon the grounds that the evidence is incompetent, irrelevant and immaterial and hearsay in so far as the defendant, James Millio, is concerned, and not binding upon him.

[fol. 922] The Court: I so instruct the jury, and the same is true with respect to Joseph Simmons. A statement made after the event, as I told you, the statement binds only the persons making them, and in this instance if you find beyond a reasonable doubt the various elements necessary, it would be binding only against Mr. Coppola and not against Mr. Simmons nor Mr. Millio.

Mr. Broughton: Mr. Eddy, would you answer the question?

The Witness: Would you repeat the question, please?

(Question read.)

The Witness: Frank Coppola told us that he had met Carmelo Giambra in the summer of 1956 and that Carmelo Giambra had imposed his friendship upon Coppola against Coppola's will. Coppola said Giambra kept urging him to participate in some bank robberies, and he was opposed to being involved in any bank robberies, and he suspected that Giambra had been planted by the Federal Government to solicit information from him. He told us he had [fol. 923] had Giambra checked out. He told us that Giambra mentioned specifically two banks he had in mind, and one of these banks was the Liberty Bank of Buffalo, Linwood-North Branch. Giambra told Coppola he and two

friends had looked this bank over for about a year, but did not have nerve enough to go through with the robbery. Coppola said he then examined the bank and on completion of his study of the situation he felt the other bank was a more—

Mr. Mahoney: I object to this as incompetent, irrelevant and immaterial and not collateral and not binding upon the defendant.

The Court: Not to be received by the jury as evidence of any other crime, but part of the narration at that time. I will charge you more specifically about that later on.

Mr. Mahoney: My objection is?

The Court: Overruled, and you may have an exception.

[fol. 924] Mr. Mahoney: I respectfully except and wish to say that I am no doubt in a position where I merely stated collateral to the issue. If the theory, and I really do not want to argue this at length before the jury if the Court decides otherwise—

The Court: I think it would be better if you would just put on the record at the time when the jury is not here.

Mr. Mahoney: I am just concerned with criticism that might be made of me later on.

The Court: Will the record show that counsel is permitted at this time to delay the details of his objection, because of the presence of the jury and he may put it on the record as of this time when the jury is not present.

Mr. Mahoney: And I have an exception to your ruling?

The Court: Yes.

Mr. Broughton: May I also be heard at that time, your Honor?

The Court: Of course.

Q. Mr. Eddy, was another bank mentioned by name by the defendant?

[fol. 925] Mr. Mahoney: That is objected to, your Honor.

The Court: Yes, that is sustained. That is an isolated transaction.

Mr. Broughton: I am asking for the conversation.

The Court: Ask in another way.

Q. I withdraw the question. Kindly go on with the narration.

A. Frank Coppola told us he had instructed Carmen Giambra to tell his friends that Giambra and his friends should pull the robbery of the Liberty Bank, Linwood-North Branch, and ask them if they had the guts to go through with the robbery. I specifically asked Mr. Coppola why he didn't participate personally, and he said he did not want to participate personally in the robbery, if more than four persons were involved the total split wouldn't amount to more than three or four thousand per person, although he told us if the robbery went through when he instructed them, they would have obtained another $50,000.00. Mr. Coppola also told us he was under investigation in another matter and that he felt if the robbery went through of the Liberty Bank without his presence he would have had an alibi for that period of time, and it would take the heat off of him on the other matter on which he was under investigation. This would [fol. 926] give him time to plan the other matter he had in mind.

Mr. Mahoney: I object to this as strictly violative of the rule of evidence. You cannot support an allegation contained in this indictment by proof of another violation.

The Court: Part is evidence and part narrative, and any evidence that may enter your mind about another crime is not to be taken as proof of the crime alleged herein.

Mr. Mahoney: I respectfully except, your Honor.

Q. Will you go on, Mr. Eddy?

A. Frank Coppola told us that he understood from the proceeds of the robbery of the Liberty Bank that he would receive money to help finance this other matter he had under consideration. He also told us that the Liberty Bank robbery should have come off three or four days before it did. That the robbers had taken the car and they had chickened out. Coppola said he got hold of Carmen Giambra and asked Carmen Giambra why they had failed to go through with the robbery that they had planned, and Giambra told him they didn't have money enough. Coppola then told us that he had borrowed $350.00 from friends of his in Niagara Falls and that he had given

[fol. 927] Carmen Giambra this $350.00 and told him to split it with his associates and then they would have no excuse for not going through with the robbery. Coppola told us he had planned the robbery and set it up to go through at 9:30 in the morning, because that is when the vaults were full, and the robbers would get more money. He told us he sat at the radio in Niagara Falls on October 2nd and listened for the bank robbery to be reported. He said he didn't hear any news up until noon, and he later heard about the robbery later in the evening while playing cards with friends in Niagara Falls. Coppola told us that there was a car used in this bank robbery and the car was a Buick and it had been driven by a person by the name of Jimmy, and this Buick had been obtained before the robbery for the purpose of using in this robbery. He told us that the Buick that was recovered at the corner of Bryant and Elmwood by the Buffalo Police Department was the car the robbers had used in this robbery. Frank Coppola told us he had gotten nothing out of this robbery, and I asked him specifically what he meant he had gotten nothing out of the robbery, and he told us he had loaned Giambra $350.00 with the understanding he would be repaid from the proceeds of the Liberty Bank robbery, that [fol. 92] he had spent his own time and money in casing the bank and he had spent his own time and money in setting the robbery up, and that he had spent his own time and money in driving around the bank looking it over and his own time and money in instructing the others how to proceed. He also said he had allowed them to use his apartment on Niagara Street without receiving any remuneration for it. He told us he had loaned Carmen Giambra $1800.00 with the understanding Giambra would pay him back from the proceeds of the Liberty Bank robbery. He did not receive any of this money back. He also told us Giambra had cheated his partners. I asked him what he meant by "Giambra had cheated his partners", and he said the other robbers had gotten three thousand out of the robbery whereas Giambra had gotten $7,000.00. I asked him if he would identify the other robbers to us. During the course of the interview he referred to them as Danny, Joe and Jimmy. He told us we already knew who Danny,

Joe and Jimmy were. They had been arrested with him that day and we had seen them in the line-up and they were being interviewed at that time by our agents in the Buffalo Police Department cell block. We asked him if he would identify Jimmy for us. He told us if we had interviewed Carmen Giambra we already knew who Jimmy was, and [fol. 929] he told us Jimmy was Giambra's best friend.

Q. Does that conclude the body of the statement?

A. Yes, sir. That is the substance of his statement.

Q. Now I want to ask you, Mr. Eddy, specifically, did Mr. Coppola personally state the other matter which you have referred to?

A. Yes, sir, he did.

Q. I want his words, what he said.

Mr. Mahoney: I object to this as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Broughton: I suggest it is completely competent as I have indicated to the Court in a memorandum I have submitted on the question not on the guilt in this crime, but only on the question of motive.

Mr. Mahoney: In this memorandum I am going to make this observation, if the Court will examine the cases, on the factual background you will realize it is not in support of his contention.

The Court: Objection is sustained.

Q. Mr. Eddy, during this conversation was there anything said by you or by Mr. Jenson with respect to the [fol. 930] defendant's mother or wife?

A. Yes, I mentioned both of them to Mr. Coppola.

Q. In what connection? What did you say?

Mr. Mahoney: I object to this, your Honor. Strictly collateral and not connected with the allegations contained in this indictment of October 2nd, 1956. It has no relevancy to the situation.

The Court: It is part of the situation. Was this between 9:30 and 12:45 on the evening and morning of the 10th and 11th of January?

The Witness: Yes, your Honor, it was.

Mr. Mahoney: I submit to you the relevancy. That is what I am concerned with.

The Court: I think it has a potential relevancy. I don't know what the answer is, but the question of voluntariness is a question of fact for the jury.

Mr. Broughton: That is what I am getting at, your Honor, or tried to.

The Court: Proceed, and you may have an exception.

Mr. Mahoney: Exception.

Q. What did you say to him in that connection?

A. I told him we had developed evidence that his wife [fol. 931] and his mother were involved—

Mr. Mahoney: I object to that and ask to have it stricken out and the jury instructed to disregard it.

Mr. Broughton: I will withdraw it.

The Court: The jury are instructed to disregard any comment upon the wife and mother.

Q. Let me put it this way: Did you or did Mr. Jenson threaten that the defendant's wife or his mother would be subject to prosecution unless he gave you a statement?

A. No, sir.

Q. However, the subject matter did come up in the interview?

A. Yes, sir.

Q. Were any threats made by you or by Mr. Jenson against the person of the defendant, Frank R. Coppola, to induce the statement which you received from him?

A. No, sir.

Q. Were any promises of immunity or favorable terms made to him by you or Mr. Jenson?

A. No, sir, none.

Q. Did the defendant at any time during the period you have described make a request to you to see the United States Attorney?

[fol. 932] A. Yes, sir.

Q. If you can give us his words and your answers to them.

A. He said he wanted to talk to the United States Attorney to see if he could make a deal.

Mr. Mahoney: I object to this as incompetent, irrelevant, immaterial and not relevant to the situation. This is January 10th and 11th, 1957. We are accused of something having occurred on October 2nd, 1956 and not relative to the situation whatsoever.

Mr. Broughton: I am willing the last words of the answer may go out.

The Court: He asked if he could see the United States Attorney, is that so?

The Witness: Yes.

The Court: Disregard anything else.

Q. What did you answer him in reply to that request?

A. I told him he was in State custody and I could make no such arrangement.

Q. Did he make any other requests of you during the course of the interview?

A. Yes, sir.

Q. Were they with respect to the United States Attorney?

A. During the course of the interview he brought that [fol. 933] matter up again and he made other requests also.

Q. What were they?

A. They were in regard to his wife and mother.

Q. What were they?

Mr. Mahoney: That is objected to. That is not competent, relevant and absolutely irrelevant to the issue that is involved.

The Court: Do you want to press that?

Mr. Broughton: If I may withdraw that question, I will reframe it.

The Court: Yes, disregard it, ladies and gentlemen. When I say it is to be stricken or to be disregarded there are portions of testimony that sometimes have to be excluded from your thinking and in your final determination, and this is one of them in its entirety.

Q. Were there any promises or assurances given by you or by Mr. Jenson to the defendant, Frank Coppola, with respect to any prosecution of his wife or mother?

A. No, sir.

Q. Did Mr. Coppola make any request to you in respect to food or drink?

A. No, sir, he did not make any request with regard to [fol. 934] food. He did ask for something to drink.

Q. Was anything given him?

A. Yes.

Q. What?

A. Water.

Q. Who got it?

A. Mr. Jenson.

Q. Were any requests made by him with respect to cigarettes?

A. Yes, sir.

Q. Incidentally, do you smoke?

A. No, sir, I do not.

Q. Do you know whether Mr. Jenson does?

A. He does not.

Q. What was done, if anything, with respect to the request?

A. During the course of the interview Mr. Jenson went out and obtained cigarettes from Buffalo police officers and following the interview Mr. Jenson and I went and bought a pack of cigarettes and brought them back to Mr. Coppola.

Q. Was this at the request of Mr. Coppola?

A. Yes, it was.

Q. During this time did Mr. Coppola ask to be permitted to leave your presence?

A. No, he did not.

Q. Did he object to your interrogation of him?

[fol. 935] A. No, sir.

Q. In any way?

A. No, sir.

Q. Was his conversation with you free—

Mr. Mahoney: I object to that, calls [redacted] a conclusion, your Honor.

The Court: Sustained.

Q. Describe, if you will, then, the manner in which Mr. Coppola spoke to you?

A. He spoke to us very freely and, as a matter of fact, on three occasions, we got up to leave and he called us back.

Q. Will you describe to me the circumstances of your departing with respect to whether they were amiable or not?

A. They were amiable.

Mr. Mahoney: I object to that.

The Court: Tell what occurred.

The Witness: We just told him we were leaving and he made no critical comment or anything on anything we had said or anything that had taken place as we left. He did ask us at that time the source of our information.

The Court: What was the tone of voice of any of the [fol. 936] three of you, raised or lowered, or was it the same tone of voice you are talking now?

The Witness: The ordinary tone of voice, your Honor.

Mr. Broughton: You may ask.

Cross examination.

By Mr. Mahoney:

Q. Mr. Eddy, prior to January 10th of 1957, you had been in touch with Mr. William Buyers at least from November 5th, 1956, had you not?

A. Yes, sir, I had.

Q. And those occasions were quite numerous between you and Mr. Buyers prior to January 10th of 1957?

A. Yes, sir.

Q. So that you had the benefit of the information that Mr. Buyers testified to in court while you were present here last week, did you not?

A. Yes, sir.

Q. And the information that you testified to this morning to a great extent has been the information that had been supplied to you prior to January 10th by Mr. Buyers?

A. No, I would not say so.

Q. Would you say none of it was?

A. Part of it.

[fol. 937] Q. That is what I said to you, part of it?

A. Yes, sir.

Q. That information that you were in possession of that came to you from Mr. Buyers was relative to the Linwood-North Branch of the Liberty Bank?

A. Yes, sir.

Q. So at the particular time you were in Headquarters on the night of January 10th, 1957, you were in possession of not only the information that had come to you from Mr. Buyers in November and December, 1956, but the forepart of January, 1957, and you also had access to all the other information that had been given to you in this particular case?

A. Yes, sir.

Q. On the morning of January 10th, 1957, you learned that Mr. Coppola had been apprehended by the Buffalo Police?

A. Yes, sir, I did.

Q. That was some time between 11 o'clock in the morning and 12 o'clock noon?

A. That is correct.

Q. At approximately 8 o'clock at night as the result of instructions you received from your superior, you and Mr. Jenson together with four other agents left this building for Police Headquarters, did you not?

A. Yes, sir.

[fol. 938] Q. And when you got over to Headquarters you found at that particular time that the defendant Coppola was being taken for show-up by members of the Buffalo Police Department?

A. Yes, sir.

Q. And you waited around there until approximately 9 o'clock at night?

A. Yes, sir.

Q. Was it before 9 o'clock at night that you made a request of the Chief of Detectives or the head of the Homicide Squad that you wanted to talk to Coppola?

A. Yes, sir, I believe it was.

Q. You would recall, would you not?

A. It was probably between ten minutes to nine and 9 o'clock to the best of my recollection.

Q. And as the result of that request that you made of the Police Department it was granted, wasn't it?

A. Yes, sir.

Q. And the facilities of the Buffalo Police Department, at least as far as their physical assets are concerned, desks, rooms, cell blocks, and so forth, were made available to you and Jenson and four other agents, isn't that so?

A. Yes.

Mr. Broughton: I object to that, no evidence with re-
[fol. 939] spect to other offices in the building.

The Court: Overruled.

Q. Your answer was "Yes", wasn't it?

A. Yes, sir.

Q. As a result of it Mr. Coppola and you and Jenson went into this office within the cell block of the Buffalo Police Headquarters, did you not?

A. Yes, we did.

Q. And you started to interrogate him around 9 o'clock at night?

A. It was shortly after 9 o'clock.

Q. A few minutes, whatever it was, 9:05 or 9:10, is that right?

A. Yes, sir.

Q. And you stated that, I think you testified here yesterday that you finished about 12:45 and left shortly thereafter?

A. Yes, sir.

Q. During all the time you were in there there were four other members of the Federal Bureau of Investigation, were there not, in that same block, cell block?

A. Yes, they were in the same cell block, yes, sir.

Q. By the way, the office that you were in had transparent windows comparable to what we have in the court room [fol. 940] between the office of the cell block and the cell block itself, isn't that right?

A. Yes, it is.

Q. And those windows are about waist-line height?

A. Yes, sir.

Q. So that when you were in that office you could see

those individuals in the cell block and whoever was in the cell block proper could see into the office?

A. That is right.

Q. You testified here that Mr. Omar Jenson was the agent that accompanied you and was in the office of the cell block with Coppola. Who were the other agents that were with you over in the cell block?

A. There were Special Agents Frank Jenkins, Elmer Moulin, Richard Flannigan and Frank Liddy.

Q. And in addition John Roche, who was at that time head of the Buffalo Office of the F. B. I., was there, too?

A. At the time we commenced the interview I did not know of my personal knowledge, no, sir.

Q. You did see him in there during the interview, did you not?

A. Yes, sir, he came in at one time during the interview.

Q. In other words, you only saw him there for one time?

A. That is the only time I saw him, yes, sir.

Q. Was that the two, three or four minutes that you [fol. 941] described?

A. Yes, sir.

Q. That is the only time you saw him there?

A. Yes, sir.

Q. Also this information about the Buick automobile, that Buick automobile, about the fact that it was stolen, that it was recovered, appeared in the local papers, did it not, the day after the Linwood-North Branch was held up on October 2nd, 1956?

A. The recovery of the car, yes, sir, would have been carried in the paper, although I personally did not see it.

Q. Did you learn it had been reported?

A. I learned from Buffalo police records, but I never saw it in the paper.

Q. That was the day following?

A. No, sir, I did not learn the day following.

Q. It was in the paper the following day?

A. Yes, I believe so.

Q. Whether or not it appeared in the Buffalo papers, you do not know anything about it?

A. No, sir.

Q. Did you read any of the Buffalo papers on the day this occurred?

A. Oh, yes, sir.

[fol. 942] Q. Do you recall in the Buffalo paper the details of this so-called robbery that took place?

Mr. Broughton: I object to it.

Q. You read it, didn't you?

A. I read it.

The Court: I sustain it. I don't see what difference it makes if he read it.

Mr. Mahoney: He answered "Yes". I am showing a matter of public record, detail set out in the paper.

Mr. Broughton: I object to that.

The Court: It has nothing to do with the trial.

Mr. Mahoney: Let me find out. The man has answered "Yes."

The Court: I ask the jury to disregard what he did or did not read in the paper.

Mr. Mahoney: Your Honor, I respectfully except to your Honor's ruling on that score. That is all, your Honor.

Redirect examination.

By Mr. Broughton:

Q. The other agents whom you testified to were present on the third floor, am I correct, of that building?

A. The fourth floor.

Q. That is the cell block floor, is it?

[fol. 943] A. Yes, sir.

Q. Were they in the room with you?

A. No, they were not.

Q. Were they in other rooms?

A. Yes, they were.

Q. On the same floor?

A. Yes, sir.

Q. But separate from where you were?

A. That is correct.

Mr. Broughton: I have no further questions.

Recross examination.

By Mr. Mahoney:

Q. As the agents walked by that office in the cell block, they could be seen through the window by yourself?

A. No, sir, my back was toward the window.

Q. I said they could have been seen?

A. If I looked, yes.

Q. In other words, as you go in that cell block, Mr. Eddy, the office is directly ahead and a little to the right, isn't it?

A. Yes, sir.

Q. I take it, then, you were all stationed facing the Franklin Street side of the cell block as I would be facing Court Street right now?

A. Yes, sir, over towards the wall.

[fol. 944] Q. Your back, then, was to the glass you have described before?

A. Yes.

Q. You weren't looking to the rear of you at any time?

A. No, sir.

Q. With the exception when you went out?

A. Only when I went out.

Q. What transpired during that particular time of the walking back and forth you wouldn't know?

A. No, sir.

* * * * * * * *

[fol. 983] CHARGE OF THE COURT

The Court: Ladies and gentlemen, permit me at the outset to thank you for the attention which you have given, the patience you have exhibited and the tolerance you have extended because in the trial of this case a fairly lengthy time has been consumed in the testimony. The recesses have been frequent and matters of law have arisen which demanded your absence and probably tried your patience. Those are matters, however, which should not disturb you in your final determination in any manner. You are not to guess, surmise or speculate on the purposes or their results. I simply ask you to keep in mind the statements which you made when you were drawn as jurors, that you

would take the evidence from the witnesses and the law [fol. 984] from the Court as it is given to you and decide whatever issues of fact are to be decided upon those two things, free from anything else. In thanking you perhaps I should also impress upon you that you are about to approach the performance of your most important duty, and in that approach I hope you will give it, and I know you will, the same courteous, timely and patient attention which you have the detail throughout this trial. The indictment charges these defendants, Joseph Simmons, James Millio and two others with having on or about the second of August, 1956, within this district, by force, violence and intimidation taken from the person and/or persons of the employees of the Liberty Bank of Buffalo, Linwood Branch, approximately $23,775.10 of United States currency which money was in the care, custody and control, management and possession of a member bank of the Federal Reserve System, the deposits of which were and are insured by the Federal Deposit Insurance Corporation, in violation of a [fol. 985] statutory enactment.

In the second count the same persons are charged with having on the same date entered the Linwood Branch of the Liberty Bank of Buffalo, the same bank in question, with intent to commit in said bank the crime of larceny in violation of law.

The third count charges the same persons on the same date of taking and carrying away with intent to steal approximately that amount of money, which money was in the care, custody and control and management and possession of the Liberty Bank of Buffalo, a member bank of the Federal Reserve System, the deposits of which were insured by the Federal Deposit Insurance Corporation in violation of law.

The Grand Jury further charges in Count 4 that Frank Coppola did aid, abet, counsel, induce and procure the taking by force, violence and intimidation, as set out in Count 1, and in Count 4 he likewise aided, abetted, coun- [fol. 986] seled, commanded, induced and procured as set out in Count 2.

In Count 5 and in Count 6 that he counseled, aided and abetted in the taking and carrying away an amount in ex-

cess of $100.00 as set out in Counts 3 and 4. Hence you will see that each of the last three counts charged the defendant, Frank Coppola, with not being in the bank but with arranging, in accordance with the evidence that has been adduced by the Government, that crime, so he had something to do with it. He denies it entirely. Each of these defendants has denied any implication in this bank robbery and the sum of it is they lay the entire act upon the two persons who plead guilty and were here present on the stand, Mr. D'Antunono and Mr. Giambra.

It has been repeated many times in this case, and I say to you again and, finally, that this indictment is no proof of any crime nor is it to be taken by you as any evidence of the commission of a crime. It is merely the formal writ- [fol. 987] ten pleading whereby the Grand Jury in this Western District of New York accuses the five named defendants with committing the acts above enumerated.

By another statute of the United States we find persons classified as principals in this language, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal, and whoever wilfully causes an act to be done is, if directly proven by him or another, guilty of an offense against the United States and punishable as a principal." You are not to be concerned with the punishment if and when you find the defendants, or any of them, guilty beyond a reasonable doubt in this case. Your duty with regard to this case would then be at an end. The sentence, if you find a guilty verdict, is entirely a matter for the Court. The punishment of the defendants is entirely a matter outside the jurisdiction of the jury. I might say in [fol. 988] passing, some reference was made to a rule of practice as to when a Federal District Judge had to sentence, and I might say to you as a law in this case and for your consideration we are no longer and haven't been for many years confined to the term in which a plea is entered, and it may extend from time to time as a trial Judge may determine in what he believes to be the interest of the administration of justice.

Your first task is to determine whether or not you are satisfied beyond a reasonable doubt that a crime was committed on October 2nd, 1956, and that is the crime of robbery from a member bank of the Federal Reserve System. It seems clear from the testimony that the Linwood Branch of the Liberty Bank of Buffalo, which is a Federal Reserve System member bank in this city, had certain masked and armed men enter the premises and take therefrom a certain amount of money in excess of $100.00. Hence, out [fol. 989] of that occurrence a dispute has arisen and that dispute takes the form of a criminal case, the United States of America on one hand and the defendant Simmons, D'Antunono, Giambra and Millio on the other hand, as to Counts 1, 2 and 3, and the defendant Coppola as to Counts 4, 5 and 6 in aiding and abetting the other defendants named in the commission of the crime as alleged in Counts 1, 2 and 3. The last several days have been consumed in setting before you that dispute in accordance with the procedures of a statutory enactment and case law. Each of these litigants, the United States on the one hand and the defendants Simmons, Millio and Coppola on the other, are represented by counsel as their individual spokesmen. Their duty is to present the cause of their individual clients intelligently and to the best interest of their own client, and, as they have, urging upon you the particular evidence which they say supports the attitude of guilt or innocence as the case may be. There have been many matters [fol. 990] as a result of this adverse advocacy and you, as persons not trained in the law, and particularly those of you who have stated upon selection it was your first occasion to serve upon a jury, you might well wonder how it is that inteiligent men disagreed so much in the trial of a lawsuit. It is expected because ours is an adversary proceeding. The purpose of our legal procedure is to prosecute any defendant with earnestness, as all counsel have done in this proceeding. In a constitutional form of government, we find that the truth is best served when opposing or contending parties are given individual opportunity to present evidence and argument in a court of law under the laws which the Court lays down. It is their right and duty to argue their case within the confines of those rules, but

their statements in argument or summation, and the statements made by the Court in the deciding of motions, and in presenting this charge to you, are not facts and are not [fol. 991] evidence. It is for you to determine the soundness of each individual argument, if you find it based upon evidence that was produced and admitted, or you may reject if you find that it does not have a proper basis for you consideration or adoption. Upon the Court is the responsibility for the ordinary conduct of the trial and for the receipt of evidence in an ordinary, proper manner. The trial Judge's most important function is to rule on matters of law and decisions thereon are solely the responsibility of the Court and should not in any way influence you in your determination. You have heard it said many times in the course of this trial that you, the jury, are the sole judges of the facts, and that statement is entirely correct. Upon each individual juror, upon the jury collectively is the obligation and the duty for the correct determination of the questions of fact that have been submitted to you. No man or woman among you can escape that obligation. It is yours individually and it is the obligation of the jury col- [fol. 992] lectively. If from any action, gesture, word, decision or comment any juror or members of the jury entertain any idea that this Court has any opinion as to facts involved in this litigation, discard it immediately and entirely and do not take it into consideration at all, because yours is the sole responsibility for the correct determination of all factual questions. It may not be avoided by mentally putting it aside, because of what someone else may think. It is your judgment and your decision which you must give in the performance of your duties. Now the words in the statutes referred to are so plain as to define themselves. First, there must be force, violence or intimidation. To intimidate means to place in fear, to subject by reason of force or by reason of argument. More than that, money in the possession of a member bank must be taken from that bank. Yours is a decision as to whether the evidence is sufficient to establish the burden imposed upon the Government as to the defendants Simmons and Millio upon that score [fol. 993] and yours is the duty to determine whether or not the evidence is sufficient to establish the burden imposed

upon the Government as to Frank R. Coppola as to Count 4 in connection with that first count. In Count 2 the elements are a bit different. There has to be an entry into the member bank with an intent to commit a crime, in this case the crime of larceny. Intent is a state of mind. It seldom, if ever, is proved by direct evidence, but intent is generally proved by circumstances, by indirect evidence, by the conditions and happenings which occur at a certain time and place, and from those a jury may find the question of intent to have been proved. In this connection, you have the decision of ascertaining whether or not the Government has maintained its burden of sustaining the charge that Frank R. Coppola did aid and abet, procure or commit that act alleged in Count 2.

Count 3 charges simply the taking and carrying away, [fol. 994] with intent to steal money or anything of value in the care or custody of any member bank. The same definition of intent is required and the same degree of proof. Ladies and gentlemen, the contention here is a narrow one, the actual evidence taken was not lengthy. The issue of fact is concise, the evidence is understandable and I think easily understood by you and the rules which are given you easily applied. In discussing these contentions I do so, not with any intention of indicating any feelings or attitude as to innocence or guilt, of any of the named defendants, and, if I do not give all the contentions of each of the parties, such omission should not be ignored as it will not be intentional. Any reference I make to the facts will simply be for the purpose of pointing up for you the questions of facts which you are to decide.

The Government contends that on the 2nd day of October, 1956, three men, D'Antunono, Giambra and Simmons, entered the Linwood Branch of the Liberty Bank of Buf- [fol. 995] falo, each of them armed and masked, except Giambra, who was armed but did not wear the mask. The Government contends that in so doing, that the three crimes as above described were committed, the taking of money by force and violence, by intimidation, the entering of a bank building with an intent to steal and the taking from a member bank a sum or thing of value in excess of $100.00. The Government further contends that the defen-

dant, Frank R. Coppola, was the prime mover in this enterprise, although he was not present at the time. The Government further contends that the defendant, James Millio, was a part of a common scheme or design to commit the above-named crimes and contends that he drove the car in which the three men above-named left the bank. The Government contends that it has proved and offered evidence sufficient to prove the commission of the crime itself, and I do not understand that the crime itself or the occurrences themselves are particularly disputed. The dispute is who [fol. 996] did it. Actually it is a matter for you to decide whether or not Simmons accompanied Giambra and D'Antunono into the bank and whether Millio was a defendant in the illegal enterprise by driving to the bank and away from the bank in a car. The Government contends by the statements of D'Antunono and of Coppola and Simmons, with the identification of the head teller and the other reputable evidence, that its claims have been established beyond a reasonable doubt and that it has borne its burden. Hence, the detail as to the evidence prior to and subsequent to the actual robbery in the identification by employees of the bank and of the Government as to the various defendants, Coppola's admission to a Deputy Sheriff, to members of the F. B. I., they contend establish beyond a reasonable doubt that he was the man or one of the men involved in the preparation for these transactions and, hence, a principal. The Government contends that those admissions are corroborated by circumstances, that they [fol. 997] are corroborated by the statements of other witnesses, and that they are corroborated by the physical conditions, by the car and its condition, and the fact it was stolen. The Government contends that D'Antunono voluntarily and without intimidation or coercion, without threat, promise or force testified in detail to all these events; that Coppola himself voluntarily, without intimidation, without coercion, admitted that he was one of the persons involved in these violations of law. The Government urges that the testimony of D'Antunono, although an accomplice, should be considered by you and proves the establishment of its contention. The Government further states that D'Antunono's statements are corroborated and supported by outside con-

ditions, and outside evidence, which is undisputed, and the Government says that they have established each of those crimes beyond a reasonable doubt. They further contend that Simmons' admissions made by him voluntarily, without intimidation, without coercion, over his own signature, [fol. 998] are sufficient, with the corroborating evidence, to connect him with a commission of this crime beyond reasonable doubt and that the proof as to the defendant Millio is sufficient without any statement having been given by him. Each of the three defendants, as each had a right to do, put the Government to its proof on all the material allegations of the indictment. Each defendant contends that the proof offered here is not sufficient, that the men and women witnesses gave testimony which was not of such a quality as would carry conviction within the legal rulings as explained to you. The defendants contend, through their counsel, that any confessions given or any admissions made were a result of such a set of circumstances as to constitute an involuntary act on the part of each defendant, and should be disregarded. When such a conflict of testimony occurs, we ask of our citizens that sit in a jury box, as you have done and listened with the patience which you have dis- [fol. 999] played while the evidence is produced, and we ask them under our system of law to be honest with themselves, honest to their oath, honest to their convictions, to give a fair and thorough consideration to the evidence offered, to the law as applied, and let their verdict follow accordingly. The enforcement of law, like the trying of an individual charged with an alleged violation of law, is the duty of all of us. It is particularly the duty of the trial Court and the jurors in a criminal case not to shirk responsibilities, because our duties are absolute and they are uncompromising. Your particular function, that of seeking and finding, is a hard, cold job, not to be swayed by sympathy or influenced by prejudice. The success of our jury system lies only in the fact that men with an honesty of effort, with the purest of motive, will sit here unmoved by prejudice.

The prosecution has a burden of proving its case beyond a reasonable doubt. A reasonable doubt does not mean [fol. 1000] a whim, fancy or caprice. It does not contem-

plate prejudice or sympathy. It is such a process of mental reasoning as brings you to a conclusion of innocence or guilt, applying the standards of reasonable men and women of affairs in our community. It does not depend upon whether you have a liking or aversion for the law, the lawyers or the Court. It is such a doubt that a juror might have after a consideration of all of the evidence, after a discussion of the evidence with his fellow jurors, based upon reason and upon intelligence with a desire of the individual juror to solve that question of fact. If any of you have such a doubt that would require you to hesitate to act and you could give a reason in your own wording if you were called upon to so do, and say this is the reason for my doing this or that, then you could say you have a reasonable doubt. Any juror having any such reasonable doubt is required to vote for a verdict of not guilty. Close to this rule of rea- [fol. 1001] sonable doubt is another rule you have heard discussed, and that is the rule of presumption of innocence. It means simply this, that under our system a defendant is not required to prove his innocence. The burden is upon the Government to prove his guilt, and so he enters upon the trial of a case with that presumption existing and that presumption remains with him during the course of the trial, the offering of evidence the argument of counsel and the charge to the jury. It remains with him until, and unless you, in your jury room, in a discussion of all of the evidence, arrive at the conclusion that this guilt has been established within the rule that I just laid down for you beyond a reasonable doubt.

Other rules in connection with the determination of the weight you shall give evidence are these. There has been argument in this case as to the testimony of an accomplice. D'Antunono is, on the evidence here, an accomplice within the rule that I will lay down for you. An accomplice is one [fol. 1002] who, united with another, in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because he participated in the criminal act charged. On the contrary, the testimony of an accomplice alone, if believed by you, may be of sufficient weight to sustain a verdict of guilty, and thus especially where there is corroboration or support

by other evidence. However, you the jury, should keep in mind that such testimony of an accomplice is to be received with caution and weighed with great care. I say to you in that connection, however, you are not to be concerned with the legal niceties or the final disposition by this Court; you are to examine his testimony with the other testimony and if you find that he or any other witness has given you what you consider to be false testimony, you may reject all of his testimony or you may retain that which you believe to be true and reject that which you believe to be false. It [fol. 1003] is entirely a matter for you. You are not required to reject his or any other witness' testimony as a whole. As I say, you may accept that which you believe and reject that which you believe to be untrue. It is entirely a matter for your own personal and collective judgment. We have another matter which has been the subject of some argument and that is the question of the weight to be given confessions or admissions. I think I can best express it in this language: A confession is an admission by a defendant of the facts constituting the crime charged. A statement less than an admission of all of the facts charged would be a partial confession. But the same rule applies to each. The very nature of a confession requires that the circumstances surrounding it be subject to careful scrutiny in order to determine whether it was voluntarily made. In this connection the testimony of the agents as to conversations had with Joseph Simmons in the Erie County Jail on [fol. 1004] January 13th and 14th, 1957 cannot be considered by the jury in determining the guilt or innocence of Frank R. Coppola or James Millio. Such testimony must be laid aside by the jurors in considering the case against any other person than the one giving the statement. Exhibit 45 in this case, it is the written statement of Simmons, dated August 20th, 1957, is not to be considered by the jury as any evidence against the other two defendants. You must lay that exhibit aside because it has been specifically stated to you at the time of its reception this is hearsay as to them.

There is another rule of law which relates to the matter of evidence. The failure of a defendant to testify in his own behalf creates no inference of any kind in regard to the evidence offered. No unfavorable inference may be

drawn in this case because of the failure of Coppola, Millio or Simmons to take the stand. It is simply a repetition of the rule I have already stated. There is no burden upon the [fol. 1005] defendant to prove his or their innocence. Many of you stated upon the examination of your qualifications to sit as intelligent and interested persons, as you have, that this was your first time to sit upon a jury and others that you had previously sat as State Court juries. Because of that I must advise you that an unanimous verdict is required in Federal Court. It is not necessary to a verdict of guilty as against the defendant Frank Coppola, in Counts 4, 5 and 6, that he had a pecuniary interest in the alleged crime, or that you find he received anything from it, that he was present at the time of the crime nor that it was carried out exactly the way he planned it, if you find he did plan it. In order to be an aide, counselor or one who commands or induces or procures, those things are not elements of this crime, that is, he expected to benefit from the commission of the principal crime. There is this case of one of the witness's statements that he shared in the fruits of the alleged crime, and, if believed by you, may be considered by [fol. 1006] you in determining whether or not he did abet, counsel, procure and command the commission of the crime as charged. He didn't need to be there himself, but you must find all of the elements of aiding and abetting as against Frank R. Coppola beyond a reasonable doubt just as you do the others. Are there any requests to charge or any exceptions?

Mr. Broughton: I have no exceptions or requests, your Honor.

Mr. Seeberg: I have no exceptions or requests, your Honor.

REQUESTS TO CHARGE AND EXCEPTIONS TO CHARGE AS GIVEN

Mr. Pacini: I have no exceptions to your Honor's charge, but I respectfully request your Honor to charge the fact, however, that a witness has been previously convicted of a crime does not disqualify him as a witness, but such a witness should not be treated as an ordinary witness of good character and that his testimony may not be as worthy of belief as one who has never been convicted.

The Court: That is the law, but entirely a matter for you to decide. I so charge.

[fol. 1007] Mr. Mahoney: May I respectfully except to that portion of your Honor's charge wherein you said some reference has been made to Rule 32, the statement of the Court I didn't clearly understand. It is true that the Court is no longer confined to the term of court at which a case is brought to be limited to the sentence, but I think your Honor said something after that. I couldn't catch it. You were talking a little too fast.

The Court: The Court does not lose jurisdiction to impose sentence after the trial term, postponements being unconditioned and for a definite or indefinite period and for a purpose incident to the administration of justice.

Mr. Mahoney: In that connection I may have an exception, your Honor, merely because it is my understanding there is a suggested period the Court can delay and it is not permanent in the interest of justice.

The Court: I can assure you, Mr. Mahoney, it will not be delayed permanently and do not want any such inference to [fol. 1008] be in the minds of you ladies and gentlemen.

Mr. Mahoney: I would like to except to that portion of your Honor's charge, which occurred about five minutes ago, wherein you stated it was not necessary for a conviction for aiding and abetting on the part of Mr. Coppola that he be actually present or that part that he had a pecuniary interest, or that it was carried out in a manner which he did not plan. Just that phraseology to the effect it was not necessary that he be present in order to warrant a conviction of aiding and abetting.

The Court: You may have an exception.

Mr. Mahoney: I understood you to say before we started this morning you approved No. 10 I requested. Do you have my requests before you?

The Court: Yes, I do.

Mr. Mahoney: Will you please refer to it?

The Court: Mere knowledge on the part of Coppola that the bank was to be robbed or his acquiescence in robbing such bank is insufficient to warrant a conviction of Coppola. [fol. 1009] That is the law, and I incorporated it in my main charge by saying that the fact he was not there or

did not have a pecuniary interest or didn't take something away is not your decision. Your decision is did he aid and abet, but the request to charge is the law, knowledge on the part of the defendant Coppola that it was to be robbed or his acquiescence in robbing such bank is insufficient to warrant a conviction.

Mr. Pacini: If I may make one more request? I respectfully ask the Court to charge the jury that any conversation or any testimony given in this case as to a conversation had between any witnesses or with any defendants not within the presence of the defendant Millio cannot be considered by this jury against Millio and not binding upon him.

The Court: I have so charged about three times, but I charge again each confession or statement, if you find a voluntary statement, is evidence only as to that person.

[fol. 1010] At this time the charge having been completed, you who were the alternates who have sat patiently throughout this trial are now discharged from consideration of this case. The reason for alternates is, it is important to all parties in the event one of the twelve might not be here at the end one of you might have been substituted.

(Jury retired at 3:50 o'clock P. M.)

(Jury returned at 5:30 o'clock P. M. and found all defendants guilty as charged.)

The Court: Do you want to make any motions?

MOTIONS TO SET ASIDE VERDICT AND IN ARREST OF JUDGMENT

Mr. Mahoney: Yes, your Honor. If it please your Honor, pursuant to Rule 33, as well as Rule 34 of the Federal Rules of Criminal Procedure, I move on behalf of the defendant, Frank Coppola, to set aside the verdict on the grounds it is contrary to law, against the weight of evidence, and under Rule 34, I move for an arrest of judgment. Your Honor is [fol. 1011] familiar with the latter rule that says that motion must be made within five days from the return of the verdict, and I would respectfully ask the Court for an opportunity to argue that matter before you at a subsequent date.

The Court: Will Thursday of next week be satisfactory?

Mr. Mahoney: Yes.

The Court: What about the other counsel?

Mr. Seeberg: I wish to join in Mr. Mahoney's motion on behalf of Mr. Sunakowski.

Mr. Pacini: I join in that motion.

The Court: A week from Thursday, which will be the 12th at 2 o'clock.

[fol. 1012]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

No. 7003-C

UNITED STATES OF AMERICA

v.

FRANK R. COPPOLA

JUDGMENT AND COMMITMENT—December 30, 1957

On this 30th day of December, 1957 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon a verdict of guilty on December 2, 1957, and of the offense of aiding, abetting, inducing and procuring the commission of a crime against the United States, in violation of Section 2113(a) and Section 2, Title 18, U.S.C. as charged in Counts Four, Five and Six, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twenty (20) years in an institution to be designated by the Attorney General. Counts Four (4), Five (5) and six (6) merged for the purposes of sentencing. Sentence to be consecutive

with the sentence in Criminal 7001-C, imposed on July 11th, 1957.

(Defendant not included in Counts One, Two, Three of indictment)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Justin C. Morgan, United States District Judge.

The Court recommends commitment to: .....

Roland E. Logel, Clerk.

Approved: John O. Henderson, US Attorney.

By: John C. Broughton, Asst. US Attorney.

[fol. 1013]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 43—October Term, 1958.

(Argued March 9, 1959.)

Docket No. 25177

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant,

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, Defendant.

OPINION—July 20, 1959

Before: Washington, Waterman and Moore, Circuit Judges.

Defendant Coppola appeals from his conviction, after a trial by jury, on all three counts of an indictment charging violation of 18 U. S. C. §2113(a) and (b), Western District of New York, Brennan, *J.* Reversed and remanded.

Leo J. Fallon, Asst. U. S. Attorney, W. D. N. Y., Buffalo, N. Y. (John O. Henderson, U. S. Attorney, W. D. N. Y., Buffalo, N. Y., on the brief), for Plaintiff-Appellee.

[fol. 1014] William B. Mahoney, Buffalo, N. Y., for Defendant-Appellant.

WATERMAN, *Circuit Judge:*

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York, on all three counts of an indictment charging violations of 18 U. S. C. §2113(a) and (b). The first count alleged that defendant by force, violence and intimidation, took approximately $52,529.00 from a Buffalo, New York branch of the Manufacturers and Traders Trust Co., said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.00. Defendant's sole contention on this appeal is that admissions by him, oral and written, were improperly allowed into evidence. As a result of those claimed errors, he seeks a new trial.

The facts necessary for a determination of this question follow. On February 15, 1956 the Clinton-Bailey Branch, in Buffalo, New York, of the Manufacturers and Traders Trust Co. was held up and robbed by two masked men. The defendant was a suspect as early as February 20, 1956, five days after the robbery, but no arrest was made. Subsequent to that time the FBI received the aid of a confidant of defendant. As a result of that aid the FBI came to believe that defendant was responsible for an unrelated crime, a robbery of a local butcher; and John A. Roche, Special Agent in Charge of the FBI in Buffalo, communicated that belief to John Golombeck, the City of Buffalo Chief of Detectives, on January 7, 1957. By means of photographs of defendant supplied by the FBI to the

[fol. 1015] city police the butcher identified defendant. On January 9, 1957 Roche again contacted Golombeck and informed him that defendant and two others were planning to rob a tavern in East Buffalo the following day. Roche then communicated the same information to the County District Attorney, and told him that defendant was also a suspect in a bank robbery. About 9:30 A. M. on January 10, 1957 Golombeck with two other Buffalo policemen arrested defendant and two of his companions. Golombeck then telephoned Roche that defendant had been arrested and was being taken to police headquarters. That afternoon when defendant was being interrogated by the County District Attorney, Roche was present. He questioned defendant briefly about his connection with the Manufacturers and Traders Trust Co. robbery. That evening two FBI agents, acting on orders from Roche, went to police headquarters, and there questioned defendant in his cell from 9:00 P. M. until about 12:45 A. M. on January 11. It was during this period that defendant made the incriminating statements involving him in the February 15, 1956 bank hold-up. These statements were then reduced to writing. Thereafter, at 11:00 A. M. on January 11, 1957, the FBI requested that defendant be turned over to them. However, the federal officers did not obtain custody of Coppola until about 4:00 P. M. on that day. In the meantime, after the FBI request, at about 2:00 P. M. that day defendant was arraigned in the City Court of Buffalo. This was the first time he had been brought before any magistrate after he had been picked up at mid-morning of the previous day. After he was turned over to the FBI he was promptly arraigned before a United States Commissioner. Although Roche and the local police testified to a spirit of cooperation between their respective law enforcement departments, they denied that defendant was arrested by the police officers at the FBI's request. Defendant made a timely motion [fol. 1015a] at the trial to suppress all evidence of his admissions. After a hearing out of the jury's presence the district court denied the motion to suppress. He held that, as a matter of law, there "was no unusual delay" of a nature that should foreclose the introduction of the evidence of the Government concerning the defendant's incriminating state-

ments made to the federal agents while he was held by the Buffalo police.

If federal officers had picked up the defendant and had incarcerated him from approximately 9:30 A. M. on January 10, 1957 until after midnight that night and during that time had interrogated him to the extent of the interrogation here, there would seem to be little doubt that his detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and that defendant's admissions made to the federal agents would have been inadmissible as evidence against him. *Mallory* v. *United States*, 354 U. S. 449 (1957); *Upshaw* v. *United States*, 335 U. S. 410 (1948); *McNabb* v. *United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784 (1943). However, the question before us that we must decide is whether the admissions made here, inasmuch as they were obtained by federal officers while the defendant was in the hands of local police, are also inadmissible.

The leading case on this point is *Anderson* v. *United States*, 318 U. S. 350 (1943). There, following a dynamiting of steel towers and TVA power lines, the defendants were arrested by the county sheriff and imprisoned without arraignment in violation of the state law. During their periods of illegal detention, which ranged from two to six days, six of the defendants were questioned intermittently by federal officers and finally confessed to the dynamiting. After they had confessed they were arrested by the federal officers and then arraigned before a United States Commissioner. Relying upon *McNabb* v. *United* [fol. 1016] *States*, *supra*, decided the same day, the Supreme Court held that the confessions so obtained were inadmissible at the trials. With respect to the fact that the illegal detentions were by local police, it said:

> "There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers." 318 U. S. at 356.

The Government, on the present appeal, asks us to construe this ambiguous language—i.e., "a working arrangement"—so as to require, in order to prohibit the use in federal courts of confessions obtained by federal officers during an illegal detention by the local police, that the illegal detention be at the instance or at the request of federal officers. Clearly such an interpretation of the phrase "working arrangement" would result in an affirmance of the decision below, for the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI, expressed or implied. Both the FBI agents and the Buffalo police denied that any such request was made.

However, we cannot accept the Government's construction. We must follow Supreme Court decisions as we read them, and not attempt redefinition of them. A careful reading of *Anderson* convinces us that the position urged upon us by the Government is a misinterpretation of that decision. The Court was careful to point out there that the *Anderson* arrests were made by the county sheriff "on his own initiative," and that the prisoners were held in the custody of "the state officers" while they were being ques- [fol. 1017] tioned by the FBI. There is no indication whatever by the Court that the sheriff and his aides were not detaining the prisoners in order to perform their own primary function, that of the investigation of a local crime. The only "working arrangement" spelled out by the facts of that case is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter. It is without significance that the detentions and questioning periods in *Anderson* lasted much longer than here. The Supreme Court has made it clear that *McNabb* v. *United States* was decided without regard to coercion, psychological or physical, *Upshaw* v. *United States*, 335 U. S. 410 (1948), and *Anderson* was based on the principles which governed *McNabb*.[1]

[1] In *McNabb* the Supreme Court had before it a violation of the congressional requirement that federal prisoners be promptly arraigned after having been apprehended. The Court stated that the

The Fifth Circuit has placed a different interpretation upon *Anderson* than we do here, and the Supreme Court [fol. 1018] has declined to review its decisions. *Horne* v. *United States*, 246 F. 2d 83 (5 Cir. 1957), *cert. denied*, 355 U. S. 878 (1957); *Brown* v. *United States*, 228 F. 2d 286 (5 Cir. 1955), *cert. denied*, 351 U. S. 986 (1956), *rehearing denied*, 352 U. S. 861 (1956); *White* v. *United States*, 200 F. 2d 509 (5 Cir. 1952), *cert. denied*, 345 U. S. 999 (1953), *rehearing denied*, 346 U. S. 843 (1953); see *Papworth* v. *United States*, 256 F. 2d 125 (5 Cir. 1958), *cert. denied*, 358 U. S. 854 (1958), *rehearing denied*, 358 U. S. 914 (1958). However, a denial of a writ of certiorari imports no expression of opinion upon the merits of the decision wherein it is sought. *Elgin, Joliet, and Eastern Ry. Co.* v. *Gibson*, 355 U. S. 897 (1957); *Brown* v. *Allen*, 344 U. S. 443 (1953); *rehearing denied*, 345 U. S. 946 (1953); *House* v. *Mayo*, 324 U. S. 42 (1945), *rehearing denied*, 324 U. S. 886 (1945); *Atlantic Coast Line R. Co.* v. *Powe*, 283 U. S. 401 (1931); *United States* v. *Carver*, 260 U. S. 482 (1923); *Graeber* v. *Rhay*, 256 F. 2d 556 (9 Cir. 1958), *cert. denied*, 358 U. S.

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purpose of this congressional requirement was to prevent any possibility that federal officers would engage in the abuses that sometimes accompany "secret interrogations," and the Court then decided that this prevention of abuses was so basic to a true administration of federal justice that federal courts would be derelict in the "duty of courts as agencies of justice and custodians of liberty" if they allowed themselves to countenance introduction into evidence of admissions obtained by federal officers from "secret interrogation of persons accused of crime."

No violation of this *congressional* requirement was involved in *Anderson*. There the illegal detention was solely that of Tennessee officers. However, the Court saw that the basic problem that was present in *McNabb* was equally present in *Anderson*. As in *McNabb* the *Anderson* defendants were interrogated by federal officers while they were being illegally detained without arraignment. To be sure, the failure to promptly arraign was the act of the Tennessee officers who were thereby violating their own Tennessee law, but the interrogation in both cases was by federal officers. The Supreme Court held that it was just as much the duty of a federal court to exclude admissions obtained by federal officers during the *Anderson* "secret interrogation" as it was to exclude admissions obtained by federal officers when the delay in the arraignment, as in *McNabb*, was the act of federal officers.

857 (1958). Consequently, we are quite free to disagree with the position taken by that Circuit; and, in the light of the factual setting of *Anderson* we are of the opinion that we are obligated to do so.

Just as the "working arrangement" spelled out in *Anderson* v. *United States* is, in our opinion, present here, the other factor relied upon in that case to invalidate the confessions, an illegal detention under the applicable state law, 318 U. S. 350, 355-56, is present here also. An examination of the New York law convinces us that the detention of defendant without arraignment from approximately 9:30 A. M. in the morning until he confessed late that evening, without any apparent reason (except for the purpose readily inferred), was illegal. *People* v. *Lovello*, 1 N. Y. 2d 436 (1956); *People* v. *Snyder*, 297 N. Y. 81 (1947); *People* v. *Alex*, 265 N. Y. 192 (1934); *People* v. *Mummiami*, 258 N. Y. 394 (1932); *People* v. *Trinchillo*, 2 A. D. 2d 146, 153 N. Y. S. 2d 685 (4th Dept. 1956); *People* v. *Redmond*, 265 App. Div. [fol. 1019] 307, 38 N. Y. S. 2d 727 (3d Dept. 1942); *People* v. *Kelly*, 264 App. Div. 14, 35 N. Y. S. 2d 55 (3d Dept. 1942); *People* v. *Calebressi*, 233 App. Div. 79, 251 N. Y. S. 603 (3d Dept. 1931). The Government does not argue to the contrary.

The admissions were improperly admitted into evidence, and the defendant is entitled to a new trial.

Reversed and remanded.

MOORE, *Circuit Judge*:

I dissent in a separate opinion to be filed later.

[fol. 1020] Filed: December 4, 1959

MOORE, *Circuit Judge* (dissenting):

I dissent.

The decision of the majority, in my opinion, carries the holding of the Supreme Court in *Anderson* v. *United States*, 318 U. S. 350 (1943), into the controversial state-federal law enforcement territory far beyond the actual limits of that holding. Not only does the result reached conflict with recent decisions in the Fourth, Fifth and Sixth

Circuits but it may well have detrimental effects on federal law enforcement. In an effort to assure the individual defendant of his constitutional rights (to guard which the courts must ever be zealous) the courts should not disregard the welfare of the millions of law-abiding citizens who are entitled to federal, state, county and city police protection against crime. This balancing of seemingly opposing interests has been commented upon so many times that its mere mention is trite. But it is not trite to create by judicial decision a needless impasse to obtaining necessary police protection.

Consider for a moment the virtually undisputed facts. Defendant Coppola, suspected upon sufficient grounds by the local Buffalo police of being about to commit a crime (i.e. robbery) with others, also suspected, was apprehended by the Buffalo police, for questioning by them, New York State police and by a representative of the Erie County District Attorney. The FBI, having been informed of the arrest and desirous of inquiring concerning various crimes under investigation, were permitted to interrogate defendant at Police Headquarters briefly during the afternoon and more extensively during the late evening of January 10, 1957. At this second interview statements, oral and written, were made to the FBI which, upon the trial from [fol. 1021] which this appeal is taken, defendant's counsel sought to exclude. A protracted hearing (the jury not being present) was held by the trial judge, who, upon facts little disputed, concluded that the statements were admissible.

The majority admit that "the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI, expressed or implied." Indeed, "inference" is not required because defendant's counsel expressly conceded "I do not claim that the Buffalo police made an arrest at the behest of the FBI." This concession was again repeated when the question arose as to whether any evidence was necessary to establish this fact. This fact being undisputed, no further evidence was received relating to that issue. There is no evidence that defendant was in any way mistreated or abused. After hearing all of the evidence and observing the witnesses the trial court came to the conclusion that the

defendant's admissions to the FBI were admissible. The majority, however, without knowing why the local police held the defendant for investigation without arraignment from the time of his arrest on January 10 to the time he was taken before a local Commissioner on January 11, have not only held that the local police delayed too long in their arraignment proceeding but that any statement taken by the FBI during this State delay rendered defendant's admissions inadmissible in the federal court trial. This conclusion was reached despite the fact that the federal arraignment was made less than two hours after defendant was released from local police detention.

Completely misconstruing, in my opinion, the facts in the *Anderson* case, the majority claim to be bound by a principle which the opinion therein discloses was never declared. The decision in the *Anderson* case was based [fol. 1022] specifically upon a finding upon the particular facts of that case that there was a "working arrangement" between the federal officers and the local sheriff whereby the defendants were arrested and detained by the local police. The majority refer to these words as ambiguous language, overlooking the fact that if the language were ambiguous it should not have a binding effect on this case based on different facts. But the language was not ambiguous. The situation there was analogous to that found in agency cases where the act of the agent is imputed to the principal. In *Anderson* the facts show that the local police were in effect working for and on behalf of the federal authorities. Naturally a detention for such a purpose could well be considered a detention by federal authorities. It was a "working arrangement" for the benefit of the federal government.

In sharp contrast here the arrest was concededly an independent act of the Buffalo police without any request or suggestion by the FBI. On January 7, 1937 the Buffalo Agent-in-Charge of the FBI informed the Chief of Detectives of the Buffalo police that they had received information that a butcher, first name Paul, last name unknown, had been robbed in the night of January 4 by Coppola, D'Antuono and Simmons. The Agent asked if there were such a hold-up on the local police books. The hold-up

was confirmed, the butcher being Paul Redlinski. On the basis of photographs made available to the Buffalo police by the FBI, Redlinski identified Coppola as the man who had robbed him on January 4.

On January 9 the FBI advised the police that the same three individuals had planned a further robbery in East Buffalo at 10:00 A. M. on the next day, January 10, possibly the El Chico Tavern on Clinton Street. The FBI Agent told the Buffalo District Attorney that "we felt obligated to furnish him with this information so that [fol. 1023] he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up" (113aa). This, as well as the Redlinski robbery, was only a State offense and thus outside the jurisdiction of the FBI.

Thereupon the Buffalo police without any direction, suggestion, supervision or participation by the FBI made their own plans to safeguard the citizens of Buffalo against a contemplated crime which was wholly within their jurisdiction. Buffalo police were stationed in five different taverns where the suspected hold-up might be and the Detective Chief and two other Buffalo policemen were in an automobile at about 9:30 A. M. or 9:45 A. M. in the vicinity of Clinton and Babcock Streets. No FBI agent accompanied them. Seeing the three persons who were suspected of being about to commit a hold-up in a car in the vicinity of the tavern to be robbed the Buffalo police intercepted it and took the occupants to the Buffalo Police Station.

Reviewing the conduct of both Buffalo police and the FBI at this stage, there is no proof that the FBI for their own purposes or otherwise had any part in the decision or the actions of the Buffalo police in their endeavor to prevent a robbery. The arrest of Coppola and his companions was no part of any FBI scheme to obtain their detention for purposes of FBI investigation. The FBI had learned of Coppola's alleged participation in the butcher robbery and had also learned of the robbery to be perpetrated the next morning. Surely no one would advocate their remaining silent and not informing the local police. The trial judge commented on the same subject saying: "here is information given—it seems to me entirely prop-

erly—it seems to me it would be a failure on the part of the FBI if they didn't make it known to the local authorities that a crime, according to their information, was about [fol. 1024] to be committed. There is no evidence that they gave these local police any instruction; the local police do as they please. They arrested him, what seems to me, regularly. Here was a man that wasn't being held just for investigation for one simple matter; it was quite apparent the Buffalo police wished to interview him with regard to many matters, and investigation went on" (129aa).

That subsequent notice of arrest of Coppola and his confederates was given to the FBI was normal police procedure. In fact it would have been most unnatural had the Buffalo police not done so. Interchange of information between the FBI and local police throughout the country should be encouraged if the public is to have proper safeguards against the commission of crime. This interchange, however, does not create the type of "working arrangement" found to exist in the *Anderson* case. Once the FBI knew of the whereabouts of the persons arrested it was their duty to endeavor to ascertain all possible facts from them concerning crimes which they were investigating. Since the only place this investigation could go forward was in the place where the suspects were to be found, namely, in the local police station, it was necessary to talk to them there. This the FBI did. They had no overriding federal sovereign power to wrest the defendant from the custody of local police and take him to federal headquarters or to arraign him before a federal commissioner. The courtesies extended to the defendant by the FBI during the interviews and his almost immediate arraignment upon his release by the local police are undisputed. They attest the high degree of constitutional protection accorded by the FBI.

The opinion of the majority seems quite self-contradictory. They say that the purpose of the *Anderson* and *McNabb* cases is "to discourage illegal detentions by overzealous federal police officers" and while they point to no [fol. 1025] fact showing any illegal detention by the federal police, from this hypothesis, they continue to say "that the same exclusionary rule [should] be applied when federal

officers obtain the cooperation of local police, and through such cooperation the local police do the illegal detaining for the federal agents * * *." Again their statement is based upon a contrary-to-fact assumption because both defendant's counsel's admissions and the other proof show conclusively that the arrest and detention were not done at the behest of the federal agents. It would be hard to believe that the phrase "working arrangement" used by Mr. Justice Frankfurter in the *Anderson* case based upon the facts presented there could possibly have been used were the facts of this case before that court. Yet the majority are squarely holding that the mere permission by local police given to the FBI to interview, in the local police station, a person arrested by the local police upon information furnished by the FBI for a purely State offense is such a "working arrangement" as will preclude the introduction of any admissions thereby obtained in evidence in the federal court. *Anderson* does not call for this conclusion and, in my opinion, the decision here is a most unwise extension of an already well extended principle.

A careful consideration of the *Anderson*, *McNabb* and *Mallory* cases by the Fourth, Fifth and Sixth Circuits has led them to conclusions diametrically opposed to the conclusion of the majority here. In *Carpenter* v. *United States*, 4 Cir., 1959, 264 F. 2d 565, 571, the court said:

> "Federal rules and statutes governing the arraignment of persons in federal custody have no application, however, to the arraignment by state officials of state prisoners, unless, of course, the state officials are acting for, and under the direction of, federal agents [fol. 1026] under circumstances which fairly warrant the conclusion that the custody is federal in substance.
>
> * * * * * *
>
> "The arresting officer was executing no federal warrant. * * * The officer was neither under the control nor the direction of the FBI, and his custody was that of the state, which could not be converted into federal custody merely by reason of the prior receipt of the widely broadcast FBI flyer" (p. 572).

In *Stephenson* v. *United States*, 6 Cir., 1958, 257 F. 2d 175, the defendant was in the custody of the state. He was not arrested under a federal warrant until some thirteen days later and was immediately taken before a United States Commissioner. The court held that the rulings in *McNabb*, *Anderson* and *Mallory* were not applicable.

In *Papworth* v. *United States*, 5 Cir., 1958, 256 F. 2d 125, the court conceded that the local police officers had committed acts "which, had the entire matter been within exclusive federal control, would have tainted any admissions made to the officers with invalidity" (p. 128). However, there the Court of Appeals found that "there is adequate support for the trial court's finding that the arrest was by the state officers without inducement by the FBI agents, and that therefore the detention was state and not federal detention. There was thus no requirement, since there was no opportunity, for the federal agents to take Papworth before the United States Commissioner until the state officers made him available for that purpose. There is no complaint that once actual custody was turned over to the federal agents there was any delay in the arraignment" (p. 128).

To the same effect in the Fifth Circuit are *White* v. *United States*, 5 Cir., 1952, 200 F. 2d 509, cert. den. 345 U. S. 999, and *Brown and Hogue* v. *United States*, 5 Cir., [fol. 1027] 1955, 228 F. 2d 286. Here there is a concession that the arrest was by state officers without inducement by FBI agents, so that an *a fortiori* situation is presented in support of sustaining the trial court in its answer to the preliminary question of admissibility.

Quite apart from the cases the consequences of the majority decision should be considered. Assume a person at large is wanted by the FBI for serious crimes, such as, bank robbery or murder of government agents. The FBI learns that the suspect has been picked up for a misdemeanor by the local police and is in some local jail. Proper police investigation calls for them to interview the suspect at the earliest possible moment. They seek such an interview and eventually it is granted and valuable statements are made by the suspect. The FBI depart and obtain a warrant. At that point the prisoner is

still solely within the custody of the local authorities. For reasons of their own they choose not to arraign him before a local magistrate for one or two days and only then release him to federal authorities. Another variation of the same hypothesis would be the situation where a prisoner had been detained for some time before any notice of his apprehension was given by local police to the FBI. If the rule laid down by the majority here is to be the law, local or state police officers, by action which the federal authorities would be powerless to prevent, could completely frustrate the prosecution of confessed crimes of first degree magnitude. Such a result would certainly not aid the purpose of the *McNabb* rule, namely, deterrence of illegal detention by federal police officers.

In my opinion the conclusion of the trial judge was reached after carefully searching the facts relative to the oral and written statements made by the defendant and his conclusion that they were admissible as well as the conviction should be affirmed.

[fol. 1028]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. George T. Washington, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Circuit Judges.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

FRANK R. COPPOLA, Defendant-Appellant.

JUDGMENT—July 20, 1959

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that said action be and it hereby is remanded in accordance with the opinion of this court.

A. Daniel Fusaro, Clerk.

[fol. 1029]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

FRANK R. COPPOLA, Defendant-Appellant,

and

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, Defendant.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

JOSEPH SIMMONS, a/k/a Joseph Synakowski, JAMES MILLIO and FRANK R. COPPOLA, Defendants-Appellants,

and

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, and CARMELO J. GIAMBRA, Defendants.

ORDER OF THE COURT EN BANC GRANTING GOVERNMENT'S PETITION FOR REHEARING EN BANC WITH COMMENTS OF DISSENTING JUDGES—December 4, 1959

Before Clark, Chief Judge, Lumbard, Waterman, Moore and Friendly, Circuit Judges.

On Petition for Rehearing En Banc.

John O. Henderson, United States Attorney, Western District of New York, Buffalo, N. Y. (Leo J. Fallon, Special

Assistant United States Attorney, on the brief), for plaintiff-appellee.

William B. Mahoney, Buffalo, N. Y., for defendant-appellant Frank R. Coppola.

[fol. 1630] The petition for an en banc hearing of the appeal is granted, by majority vote of the active circuit judges.

J. Edward Lumbard
Leonard P. Moore
Henry J. Friendly

We dissent.

Charles E. Clark
U.S.C.J.J.

In registering my dissent I wish also to protest the taking of a vote at this time in view of the existing situation as to the court's personnel. The vote should either have been taken earlier or it should now be delayed until we have a full bench. In view of the long delay already had, the present haste is unseemly.

Charles E. Clark, U.S.C.J.

[fol. 1631] On August 18, 1959 the United States Attorney for the Western District of New York filed his petition to have this case reheard by the Court sitting in banc. He presented no new questions. On August 24, 1959 I voted to deny that petition. I adhere to my August vote. During the intervening months the decisions that I believe to be controlling here have not been modified by the Supreme Court; and there have been no intervening circumstances to warrant this late reconsideration.

Sterry R. Waterman, U.S.C.J.

Dec—4 1959

[fol. 1032]

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Present: Hon. Charles E. Clark, Chief Judge, Hon. J. Edward Lumbard, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Circuit Judges.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

FRANK R. COPPOLA, Defendant-Appellant.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

JOSEPH SIMMONS, a/k/a Joseph Synakowski, FRANK R. COPPOLA, MILLIO JAMES, Defendants-Appellants,

&

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, CARMELO J. GIAMBRA, Defendants.

ORDER GRANTING PETITION FOR REHEARING EN BANC—December 4, 1959

A petition for a rehearing en banc having been filed herein by counsel for the appellee

Upon consideration thereof, it is

Ordered that said petition be and hereby is granted.

A. Daniel Fusaro, Clerk.

[fol. 1033]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

(Argued March 9, 1959
Original Opinion Filed July 20, 1959.)

(Reargued before the Court *en banc*, December 15, 1959
Decided May 20, 1960.)

Docket No. 25177

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant.

OPINION—May 20, 1960

Before: Lumbard, Chief Judge; Clark, Waterman, Moore and Friendly, Circuit Judges.

Appeal from a judgment of the United States District Court for the Western District of New York, Stephen W. Brennan, *J.*, after a jury trial in which the defendant was convicted of violating 18 U. S. C. A. Section 2113(a) and (b). Defendant alleges that it was error to receive in evidence admissions made by him to the F. B. I. while he was held in the custody of local police.

Affirmed.

[fol. 1034] James W. Knapp, Staff Assistant, Department of Justice, Washington, D. C. (John O. Henderson, United States Attorney, Western District of New York, Buffalo, N. Y., Leo J. Fallon, Special Assistant United States Attorney, Western District of New York, Buffalo, N. Y., on the brief), for plaintiff-appellee.

William B. Mahoney, Buffalo, N. Y., for defendant-appellant.

MOORE, Circuit Judge:

Subsequent to the argument and decision of this case by the original panel, the United States petitioned for a

rehearing *en banc* as to the defendant, Frank R. Coppola. 28 U. S. C. A. §46(c). Because of the importance of the question involved, the petition was granted and a second argument was heard by all the active judges of the court.

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York, on all three counts of an indictment charging violations of 18 U. S. C. A. §2113(a) and (b). The first count alleged that defendant on or about February 15, 1956 by force, violence and intimidation, took approximately $52,529 from a branch of the Manufacturers and Traders Trust Co. in Buffalo, New York, said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.

Coppola's sole contention on this appeal is that admissions made by him, oral and written, were improperly re- [fol. 1035] ceived in evidence against him. He claims that these admissions were made during an illegal detention[1] by the Buffalo police acting under a "working agreement" with the F. B. I. and that the admissions should therefore have been excluded under *Anderson* v. *United States*, 318 U. S. 350 (1943). We do not agree. We conclude upon an analysis of the facts that the trial judge properly found that the F. B. I. in no way caused or contributed to Coppola's detention by the Buffalo police. Consequently, the doctrine of the *Anderson* case is inapplicable and the judgment is affirmed.

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[1] The government concedes that the delay of several hours by the local police in arraigning Coppola constituted an unlawful detention under New York law. See *People* v. *Lovello*, 1 N. Y. 2d 436 (1956). In our view, however, whether a detention is illegal under state law has no bearing upon the propriety of receiving admissions in evidence in a federal criminal proceeding.

Had the arrest and subsequent delay in arraignment been occasioned by federal officers, it is most probable that Coppola's detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure. See *McNabb* v. *United States*, 318 U. S. 332 (1943).

To resolve the issues here presented a thorough review of the circumstances under which the admissions were given must be made. On January 4, 1957 the butcher shop of Paul Redlinski, in Buffalo, New York was robbed. The robbery was under investigation by the Buffalo police. On January 7, 1957 the Agent-in-Charge of the F. B. I. in Buffalo, John A. Roche, relayed to John M. Golombeck, Chief of Detectives of the Buffalo police, information that the defendant Coppola and two others, D'Antuono and Simmons, had committed the robbery. Roche furnished Golombeck with photographs of these three individuals. Redlinski identified Coppola. On January 9, 1957 Roche again communicated with Golombeck and informed him that the F. B. I. had information that the same three individuals were contemplating a holdup at 10:00 A. M. the next morning, January 10—probably of the El Chico Tavern on [fol. 1036] Clinton Street, in East Buffalo. Roche also gave the same information to John Dwyer, District Attorney of Erie County "so that he might take whatever action he desired to protect the citizens of Buffalo and prevent, if possible, another holdup." He also told Dwyer that the F. B. I. had been investigating Coppola in connection with the holdup by two masked men of the Clinton-Bailey branch of the Manufacturers and Traders Trust Company on February 15, 1956 and the robbery of the Linwood Branch of the Liberty Bank of Buffalo on October 2, 1956.

Having received this information, the Buffalo police stationed details from their own force in five different taverns where they suspected the holdup might take place. On the morning of January 10, Golombeck and two other members of the Buffalo police force were in a car in the vicinity of the El Chico Tavern. Observing a car in which Coppola, D'Antuono and Simmons were the occupants, the police officers intercepted them and took them to Buffalo police headquarters. Sometime thereafter, but before noon, Golombeck advised Roche of their apprehension. Roche, Golombeck, Dwyer and Klink (a member of the Buffalo Police Department) had lunch and thereafter, with Dwyer, Roche visited Coppola in police headquarters. Dwyer told Coppola that he was interested in him in connection with a series of crimes and specifically questioned him about the

Redlinski robbery. Roche questioned Coppola briefly about the M. & T. robbery, but left to secure a form permitting a search to be made of Coppola's home. Although he had originally stated that he had no objection to a search, when Roche returned with the form, Coppola declined to sign it and no search was made. The afternoon and early evening at police headquarters was taken up largely by various appearances of the three individuals in the "show-up" room and with interrogation by the Buffalo police concerning the [fol. 1037] Redlinski robbery, a robbery on East Eagle Street, Buffalo, and a crime in Niagara Falls, all state offenses.

Later that evening, at about 9:00 P. M., after a second "show-up" at police headquarters, agents of the F. B. I. talked to the prisoners about the bank robberies. During the course of these interrogations (commencing at about 9:40 P. M.), the admissions which were received in evidence were made by Coppola. The next day, January 11, before noon, the F. B. I. requested that Coppola be delivered to them so that he could be arraigned on the federal charges. He was not delivered immediately but first arraigned by the Buffalo police, at about 2:00 P. M., before a local magistrate in the City Court of Buffalo. Thereafter he was turned over to the F. B. I. and promptly arraigned before a United States Commissioner.

At the trial Coppola urged that his admissions should be suppressed. A hearing was held by the trial court without the presence of the jury at which members of the Buffalo police force and the F. B. I. testified. The court concluded that the statements were not obtained by means of coercion or unlawful collaboration between local and federal officials and denied the motion to exclude the evidence.

In *Anderson* v. *United States, supra,* the Supreme Court held that admissions made to F. B. I. agents during a detention by state officers, who were acting at the behest and upon the instructions of the federal officials, were inadmissible because the detention was under circumstances unlawful under the rule of *McNabb* v. *United States, supra,* later codified by Rule 5(a) of the Federal Rules of Criminal Procedure. In that case property owned by the Tennessee Valley Authority, a corporation in which the United States

is a stockholder, had been damaged by dynamiting—a violation of the Federal Criminal Code. F. B. I. agents were called in to investigate. Various suspects were taken into custody by the local sheriff and detained in a building. The [fol. 1038] questioning, however, with relation to the federal crime was carried on by federal officers over a period of days. No state criminal charges were preferred during the period of detention or at any time thereafter against the defendants. There is no indication that the state officers participated in the interrogation or were endeavoring to solve any state crime. Upon the facts it was quite apparent that the state detention was solely to enable federal officers to pursue their investigation and that the federal agents were responsible for the long delay in arraignment. Hence the Supreme Court concluded that there existed a "working arrangement" between the federal officers and the local sheriff and that the sheriff was in effect acting as an agent for the F. B. I.

Coppola urges that the facts surrounding his detention fall within the scope of the *Anderson* decision. We do not agree. The differences in the facts are significant. Here Coppola and his two companions were arrested by the Buffalo police on their own initiative because of information that they had committed and were about to commit a crime or crimes in violation of state law. The arrangements to intercept and detain the three men on the morning of January 10 were exclusively planned and executed by the Buffalo police without any suggestion or participation by the F. B. I. In fact Coppola's counsel specifically stated that "I do not claim that the Buffalo police made an arrest at the behest of the F. B. I." The arrest and detention were not to aid or abet the F. B. I. in their investigation or for the purpose of enabling them to interrogate the persons apprehended about federal matters while in state custody. The apprehension and the detention were for questioning about the Redlinski robbery and other local robberies exclusively within the jurisdiction of the Buffalo police. At police headquarters after the arrest, the Buffalo police questioned Coppola and his companions con- [fol. 1039] cerning the state offenses. The record shows that the state concentrated on its own business first. These

investigations and the necessary appearances in the local "show-ups" occupied most of the day. Coppola could not have been arraigned after 5:00 P.M. on January 10, 1957 in the Buffalo City Court.* The next time he could have been arraigned was the following morning so that F. B. I. interrogation that evening did not contribute to any delay in arraignment. When questioned by the F. B. I. agents, Coppola was fully advised that he did not have to make a statement, that any statement could be used against him, and that he was entitled to advice of counsel. However, he indicated a willingness to talk and dictated a statement which was taken down in handwritten form, read over by him and then signed. Coppola had had grammar school and junior high school education as well as an accounting course for approximately a year at a business college. He was able to read and understand that which he signed. There is no evidence of any coercion, mistreatment or abuse. There is no claim made that there was any delay in arraignment by the F. B. I. or that any admissions were made during the period between his release by the local authorities and his arraignment before a United States Commissioner.

The cases other than *Anderson* v. *United States, supra,* cited by Coppola's counsel involved fact situations wholly different from that of the case before us. In *Byars* v. *United States,* 273 U. S. 28 (1926), a federal officer accompanied state officers on an illegal search and seizure. There upon the facts the court held that the illegal search "was a joint operation of the local and federal officers" and that "the effect is the same as though [the federal officer] had en- [fol. 1040] gaged in the undertaking as one exclusively his own." *Id.* at 33.

In *Gambino* v. *United States,* 274 U. S. 310 (1927), state officers conducted an illegal search and seizure looking for intoxicating liquor in the days of the National Prohibition Act. The court held that the action of the state troopers in endeavoring to enforce the Act was such that it could be said that the illegal search was "solely for the purpose of aiding in the federal prosecution." *Id.* at 315.

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* Both counsel agreed to this fact upon the oral argument on December 15, 1959.

McNabb v. *United States, supra*, involving as it does an arrest and detention solely by federal officers without participation by local officials, is also not controlling upon us in this case.

In complete contrast with the cases upon which appellant relies, there is in this record no basis for the conclusion that the apprehension and continued detention of Coppola and his two companions was at the behest of federal officers or for the purpose of aiding any investigation they wished to conduct. That the Buffalo police notified the F. B. I. of the defendants' apprehension would be normal police procedure. Only by such an interchange of information can society be adequately protected against crime. The custody of the defendants after arrest was exclusively that of the Buffalo police, as was their interrogation. However, once the F. B. I. knew of the defendants' arrest, it was their duty to endeavor to ascertain all the available facts about the federal crimes which they were investigating. To do this the F. B. I. agents were obliged to conduct their interrogation in the local police station and of course to obtain consent of the local police. That the apprehension and detention were exclusively for state crimes is reflected by the fact that, except for the brief conversation in the afternoon when permission was sought to search Coppola's home, not until well along in the evening was any opportunity given to the [fol. 1041] F. B. I. to question the defendants concerning the matters in which the federal officers were interested.

Appellant argues that from February 15, 1956, the date of the M. & T. bank robbery, until defendants' arrest on January 10, 1957, the Buffalo police and the F. B. I. collaborated in trying to solve the crime, and from this fact would draw the conclusion that there must have been a "working arrangement" between them. Mere words however, such as exchange of information, cooperation, collaboration, or even "working arrangement" do not carry within themselves any solution to the difficult problems of federal-state relations here involved. If this cooperation reached the point of arrest and detention by local police for the purpose of enabling federal officers to question the defendants concerning the bank robberies for a period of time forbidden to federal officers by Rule 5(a) of the Federal

Rules of Criminal Procedure, admissions thus obtained would properly be excluded. Such a rule prevents federal officers from evading the letter and the spirit of Rule 5(a). The rule excludes confessions when the "working arrangement" includes the illegal detention—in other words, when federal law enforcement officers induce state officers to hold the defendant illegally so that they may secure a confession. However, to bring a case within this rule there must be facts, as there were in *Anderson*, not mere suspicion or conjecture. Here, as in *Abel* v. *United States*, 258 F. 2d 485, 494 (2d Cir. 1958), *aff'd*, 362 U. S. 217, 226-230 (1960), rehearing denied, May 16, 1960, there is no basis on which this court can properly reverse the conclusion of the district judge. The Supreme Court's decision in that case makes plain that the mere fact that two or more agencies have the same crime or the same suspects on their books and that they are cooperating to achieve a solution does not make one the agent of the other and thus responsible for the other's acts.

[fol. 1042]. If there is to be effective law enforcement, it is to be expected that every police agency, be it state, county, city or federal, will cooperate and exchange information. Probably the F. B. I. and local police have in countless cases the same crimes and the same suspects on their books. Undoubtedly after the Liberty Bank robbery in the present case, both state and federal agencies had the crime under investigation. However, there is no evidence that the F. B. I. had any knowledge whatsoever of the action the Buffalo police might take as a matter of local law enforcement. Nor is there any reason why the local officials should have discussed their proposed action with the F. B. I. In the absence of any evidence of collaboration to achieve an unlawful end, we would not be warranted in creating a rule whereby prior cooperation of state and federal officials in the investigation of crime would prohibit the admission of uncoerced confessions made during a detention by state officers which the Federal officials did not induce and were powerless to prevent.[2]

[2] Recent decisions of other circuits in cases involving facts similar to those here have rejected attacks upon the admissibility of

CLARK, Circuit Judge:

I dissent. I concur in Judge Waterman's dissenting opinion.

[fol. 1043] WATERMAN, Circuit Judge (dissenting):

I dissent.

There are two separate appeals before the court sitting *in banc*. The first appeal is from Coppola's conviction upon the indictment arising out of the robbery of the Manufacturers and Traders Trust Company on February 15, 1956. The second is from his conviction on three counts of aiding, abetting, and counseling four defendants who robbed the Liberty Bank of Buffalo, Linwood Branch, on October 2, 1956. The indictments in both cases were filed on February 4, 1957. The Manufacturers and Traders Trust Company case in which Coppola was charged with physically participating in the actual robbery was tried in July 1957, before Judge Brennan of the Northern District of New York, sitting in the Western District by designation, and a jury. Coppola was sentenced to 20 years. The second case in which Coppola was charged with having aided, abetted and counseled those who entered the bank though he did not actually participate physically in the holdup was tried in November 1957 before Judge Morgan and a jury. Coppola was sentenced to another 20 years to be served consecutively to the 20 years imposed upon him by Judge Brennan. Coppola did not testify before the jury in either case.

The indictments were filed after Coppola had been apprehended by Buffalo police officers in the forenoon of January 10, 1957 and after he had been interrogated that

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evidence obtained by federal agents during a state detention on the ground that the relationship between the local and federal authorities was not comparable to the "working arrangement" described in *Anderson* v. *United States, supra*. See *White* v. *United States*, 5 Cir., 1952, 200 F. 2d 509; also *Carpenter* v. *United States*, 264 F. 2d 565 (4th Cir.), cert. denied, 360 U. S. 936 (1959); *Stephenson* v. *United States*, 257 F. 2d 175 (6th Cir. 1958); *Papworth* v. *United States*, 256 F. 2d 125 (5th Cir. 1958), cert. denied, 358 U. S. 854.

evening and in the early hours of January 11, 1957 by agents of the Federal Bureau of Investigation. Incriminating admissions concerning his implication in the two bank robberies were made by Coppola to the agents at that time. The Government at trial sought to introduce these admissions into evidence, and the attorney for Coppola requested and received a hearing outside the presence [fol. 1044] of the jury for the purpose of having these admissions suppressed. Judge Brennan in the first case, and Judge Morgan in the second, refused to suppress, and each judge ruled that the statements were admissible in evidence. From these rulings defendant appealed.

The appeals were heard at the same time by a panel of this court composed of Judge Washington of the Court of Appeals for the District of Columbia Circuit, sitting with us by designation at our request, and Judges Waterman and Moore. Argument was had on March 9, 1959, and the majority opinion of a divided court was filed July 20, 1959. The Government petitioned for a rehearing *in banc* which was granted.

The Government maintained in its rehearing petition that the panel majority had misapplied the rule expressed by the Supreme Court in *Anderson* v. *United States*, 318 U. S. 350 (1943) to the facts of the apprehension, detention, and interrogation of Coppola; and that a proper application of the rule to the facts would have required affirmances instead of reversals of the trial rulings. The *in banc* majority finds that the Government's contention has merit. I disagree. The *in banc* majority's efforts to sustain the different result they reach here from the result the Supreme Court reached in *Anderson* by attempting meaningfully to distinguish the facts in the two cases appears to me to have been a failure.

The passage of time, the reargument before the *in banc* court, and the *in banc* majority opinion have only served to reinforce my belief in the validity of my July 20, 1959 opinion, the opinion in which Judge Washington joined. Therefore, I insert as part of this dissent that entire opinion, and, after quoting it, I will comment upon the content of the majority opinion from which I am now dissenting.

[fol. 1045]

THE OPINION OF THE PANEL MAJORITY IN DOCKET NO. 25177[1]

[Found at pp. 1760-1766 of Second Circuit printed opinions October Term, 1958]

No. 43—October Term, 1958.

(Argued March 9, 1959 Decided July 20, 1959.)

Docket No. 25177

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant,

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, Defendant.

Before: Washington, Waterman, and Moore,
Circuit Judges.

[fol. 1046]

WATERMAN, Circuit Judge:

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York, on all

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[1] The majority opinion of the panel in the second case, No. 25257, relating to the Liberty Bank holdup, insofar as it related to Coppola's appeal, referred to the opinion in Docket No. 25177, and its disposition was governed by the same considerations. All that I said there that has any bearing on the matters now before us is found at pages 1768-1769 of the October Term, 1958 slip sheet reports of our court, and reads as follows:

"*Defendant Coppola*

"During the course of the trial a member of the FBI, Gordon Eddy, was produced as a witness by the Government. He sought to give testimony relative to an oral confession made to him by Coppola. The latter moved to have this evidence suppressed, but after a hearing conducted out of the presence of the jury the district court permitted the testimony. As was proper, however, it carefully instructed the jury that

three counts of an indictment charging violations of 18 U. S. C. §2113(a) and (b). The first count alleged that defendant by force, violence and intimidation, took approximately $52,529.00 from a Buffalo, New York branch of the Manufacturers and Traders Trust Co., said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.00. Defendant's sole contention on this appeal is that admissions by him, oral and written, were improperly allowed into evidence. As a result of those claimed errors, he seeks a new trial.

The facts necessary for a determination of this question follow. On February 15, 1956 the Clinton-Bailey Branch, in Buffalo, New York, of the Manufacturers and Traders Trust Co. was held up and robbed by two masked men. The defendant was a suspect as early as February 20, 1956, five days after the robbery, but no arrest was made. Subsequent to that time the FBI received the aid of a confidant of defendant. As a result of that aid the FBI came to believe that defendant was responsible for an unrelated [fol. 1047] crime, a robbery of a local butcher; and John A. Roche, Special Agent in Charge of the FBI in Buffalo, communicated that belief to John Golombeck, the City of Buffalo Chief of Detectives, on January 7, 1957. By means of photographs of defendant supplied by the FBI to the city

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police the butcher identified defendant. On January 9, 1957 Roche again contacted Golombeck and informed him that defendant and two others were planning to rob a

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Eddy's testimony relative to Coppola's oral confession was not to be considered binding upon Simmons or upon Millio.

"The evidence produced at that hearing reveals that the oral admissions testified to by Agent Eddy were made at the same time and under the same circumstances as those described in United States v. Frank R. Coppola, —— F. 2d —— (2 Cir. 1959), decided this day. Therefore, for the reasons given in that decision, we hold that the testimony was improperly allowed against Coppola and that he is entitled to a new trial."

* Centered folios refer to pages of original opinion.

tavern in East Buffalo the following day. Roche then communicated the same information to the County District Attorney, and told him that defendant was also a suspect in a bank robbery. About 9:30 A. M. on January 10, 1957 Golombeck with two other Buffalo policemen arrested defendant and two of his companions. Golombeck then telephoned Roche that defendant had been arrested and was being taken to police headquarters. That afternoon when defendant was being interrogated by the County District Attorney, Roche was present. He questioned defendant briefly about his connection with the Manufacturers and Traders Trust Co. robbery. That evening two FBI agents, acting on orders from Roche, went to police headquarters, and there questioned defendant in his cell from 9:00 P. M. until about 12:45 A. M. on January 11. It was during this period that defendant made the incriminating statements involving him in the February 15, 1956 bank hold-up. These statements were then reduced to writing. Thereafter, at 11:00 A. M. on January 11, 1957, the FBI requested that defendant be turned over to them. However, the federal officers did not obtain custody of Coppola until about 4:00 P. M. on that day. In the meantime, after the FBI request, at about 2:00 P. M. that day defendant was arraigned in the City Court of Buffalo. This was the first time he had been brought before any magistrate after he had [fol. 1048] been picked up at mid-morning of the previous day. After he was turned over to the FBI he was promptly arraigned before a United States Commissioner. Although Roche and the local police testified to a spirit of cooperation between their respective law enforcement departments, they denied that defendant was arrested by the police officers at the FBI's request. Defendant made a timely motion at the

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trial to suppress all evidence of his admissions. After a hearing out of the jury's presence the district court denied the motion to suppress. He held that, as a matter of law, there "was no unusual delay" of a nature that should foreclose the introduction of the evidence of the Government concerning the defendant's incriminating statements made to the federal agents while he was held by the Buffalo police.

If federal officers had picked up the defendant and had incarcerated him from approximately 9:30 A. M. on January 10, 1957 until after midnight that night and during that time had interrogated him to the extent of the interrogation here, there would seem to be little doubt that this detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and that defendant's admissions made to the federal agents would have been inadmissible as evidence against him. *Mallory* v. *United States*, 354 U. S. 449 (1957); *Upshaw* v. *United States*, 335 U. S. 410 (1948); *McNabb* v. *United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784 (1943). However, the question before us that we must decide is whether the admissions made here, inasmuch as they were obtained by federal officers while the defendant was in the hands of local police, are also inadmissible.

The leading case on this point is *Anderson* v. *United States*, 318 U. S. 350 (1943). There, following a dynamit- [fol. 1049] ing of steel towers and TVA power lines, the defendants were arrested by the county sheriff and imprisoned without arraignment in violation of the state law. During their periods of illegal detention, which ranged from two to six days, six of the defendants were questioned intermittently by federal officers and finally confessed to the dynamiting. After they had confessed they were arrested by the federal officers and then arraigned before a United States Commissioner. Relying upon *McNabb* v. *United*

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States, *supra*, decided the same day, the Supreme Court held that the confessions so obtained were inadmissible at the trials. With respect to the fact that the illegal detentions were by local police, it said:

> "There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers." 318 U. S. at 356.

The Government, on the present appeal, asks us to construe this ambiguous language—i.e., "a working arrangement"—so as to require, in order to prohibit the use in federal courts of confessions obtained by federal officers during an illegal detention by the local police, that the illegal detention be at the instance or at the request of federal officers. Clearly such an interpretation of the phrase "working arrangement" would result in an affirmance of the decision below, for the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI, [fol. 1050] expressed or implied. Both the FBI agents and the Buffalo police denied that any such request was made.

However, we cannot accept the Government's construction. We must follow Supreme Court decisions as we read them, and not attempt redefinition of them. A careful reading of *Anderson* convinces us that the position urged upon us by the Government is a misinterpretation of that decision. The Court was careful to point out there that the *Anderson* arrests were made by the county sheriff "on his own initiative," and that the prisoners were held in the custody of "the state officers" while they were being ques-

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tioned by the FBI. There is no indication whatever by the Court that the sheriff and his aides were not detaining the prisoners in order to perform their own primary function, that of the investigation of a local crime. The only "working arrangement" spelled out by the facts of that case is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter. It is without significance that the detentions and questioning periods in *Anderson* lasted much longer than here. The Supreme Court has made it clear that *McNabb* v. *United States* was decided without regard to coercion, psychological or physical, *Upshaw* v. *United States*, 335 U. S. 410 (1948), and *Anderson* was based on the principles which governed *McNabb*.[1]

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[1] In *McNabb* the Supreme Court had before it a violation of the congressional requirement that federal prisoners be promptly ar-

[fol. 1051] The Fifth Circuit has placed a different interpretation upon *Anderson* than we do here, and the Supreme
[1764]
Court has declined to review its decisions. *Horne* v. *United States*, 246 F. 2d 83 (5 Cir. 1957), *cert. denied*, 355 U. S. 878 (1957); *Brown* v. *United States*, 228 F. 2d 286 (5 Cir. 1955), *cert. denied*, 351 U. S. 986 (1956), *rehearing denied*, 352 U. S. 861 (1956); *White* v. *United States*, 200 F. 2d 509 (5 Cir. 1952), *cert. denied*, 345 U. S. 999 (1953); *rehearing denied*, 346 U. S. 843 (1953); see *Papworth* v. *United States*, 256 F. 2d 125 (5 Cir. 1958), *cert. denied*, 358 U. S. 854 (1958) *rehearing denied*, 358 U. S. 914 (1958). However, a denial of a writ of certiorari imports no expression of opinion upon the merits of the decision wherein it is sought. *Elgin, Joliet, and Eastern Ry. Co.* v. *Gibson*, 355 U. S. 897 (1957); *Brown* v. *Allen*, 344 U. S. 443 (1953); *rehearing denied*, 345 U. S. 946 (1953); *House* v. *Mayo*, 324 U. S. 42 (1945), *rehearing denied*, 324 U. S. 886 (1945); *Atlantic Coast Line R. Co.* v. *Powe*, 283 U. S. 401 (1931); *United*

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raigned after having been apprehended. The Court stated that the purpose of this congressional requirement was to prevent any possibility that federal officers would engage in the abuses that sometimes accompany "secret interrogations," and the Court then decided that this prevention of abuses was so basic to a true administration of federal justice that federal courts would be derelict in the "duty of courts as agencies of justice and custodians of liberty" if they allowed themselves to countenance introduction into evidence of admissions obtained by federal officers from "secret interrogation of persons accused of crime."

No violation of this *congressional* requirement was involved in *Anderson*. There the illegal detention was solely that of Tennessee officers. However, the Court saw that the basic problem that was present in *McNabb* was equally present in *Anderson*. As in *McNabb* the *Anderson* defendants were interrogated by federal officers while they were being illegally detained without arraignment. To be sure, the failure to promptly arraign was the act of the Tennessee officers who were thereby violating their own Tennessee law, but the interrogation in both cases was by federal officers. The Supreme Court held that it was just as much the duty of a federal court to exclude admissions obtained by federal officers during the *Anderson* "secret interrogation" as it was to exclude admissions obtained by federal officers when the delay in the arraignment, as in *McNabb*, was the act of federal officers.

States v. *Carver*, 260 U. S. 482 (1923); *Graeber* v. *Rhay*, 256 F. 2d 556 (9 Cir. 1958), *cert. denied*, 358 U. S. 857 [fol. 1052] (1958). Consequently, we are quite free to disagree with the position taken by that Circuit; and, in the light of the factual setting of *Anderson*, we are of the opinion that we are obliged to do so.

Just as the "working arrangement" spelled out in *Anderson* v. *United States* is, in our opinion, present here, the other factor relied upon in that case to invalidate the confessions, an illegal detention under the applicable state law, 318, U. S. 350, 355-56, is present here also. An examination of the New York law convinces us that the detention of defendant without arraignment from approximately 9:30 A. M. in the morning until he confessed late that evening, without any apparent reason (except for the purpose readily inferred), was illegal. *People* v. *Lovello*, 1 N. Y. 2d 436 (1956); *People* v. *Snyder*, 297 N. Y. 81 (1947); *People* v. *Alex*, 265 N. Y. 192 (1934); *People* v. *Mummiami*, 258 N. Y. 394 (1932); *People* v. *Trinchillo*, 2 A. D. 2d 146, 153 N. Y. S. 2d 685 (4th Dept. 1956); *People* v. *Redmond*,

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265 App. Div. 307, 38 N. Y. S. 2d 727 (3d Dept. 1942); *People* v. *Kelly*, 264 App. Div. 14, 35 N. Y. S. 2d 55 (3d Dept. 1942); *People* v. *Calebressi*, 233 App. Div. 79, 251 N. Y. S. 603 (3d Dept. 1931). The Government does not argue to the contrary.

The admissions were improperly admitted into evidence, and the defendant is entitled to a new trial.

Reversed and remanded.

[1766]

[fol. 1053]

COMMENTS UPON PRESENT MAJORITY OPINION

I

I believe that the efforts in the present majority opinion to distinguish the factual situation presently before us from that in *Anderson* v. *United States*, 318 U. S. 350 (1943) have been unsuccessful. An examination of the statement of facts in the *Anderson* case, *supra* at pp. 352-55, will reveal that there a state crime clearly was involved—

the wilful destruction of power lines, see footnote 2 at p. 352. A state officer, the sheriff, acting "on his own initiative," took into his custody persons, including the eight *Anderson* petitioners, whom he personally suspected of participating in the dynamiting of the power lines. Moreover, to suggest (as the majority opinion appears to suggest) that the sheriff or any of his deputies, or any other state officer, subsequent to the state arrests, did not interrogate persons they themselves arrested is to indulge in a surmise entirely unwarranted by anything that appears in the Supreme Court's opinion.[2] Finally, at the time of the arrests, detentions, and interrogations in *Anderson* in April 1940 there was no reason, as federal agents may believe there is now, for the federal agents to enlist state connivance in effecting the apprehension and detention of suspects. *McNabb* v. *United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784, had not been decided then, and the federal agents could well have believed that the confessions obtained from the *Anderson* defendants would have been admissible in a federal court as proof of federal crimes even if the apprehension and detention of the confessing prisoners had been [fol. 1054] exclusively that of federal officers. Thus I believe that the majority here has entirely misread the *Anderson* case when they conclude that upon its facts "it was quite apparent that the state detention was solely to enable federal officers to pursue their investigation * * *"

Even had the facts in *Anderson* been as the majority here wishes them to have been, the rule of law which the majority here announce is incompatible with the theory upon which *Anderson* was decided. My colleagues appear to hold that, under *Anderson*, a confession to federal officers, prior to any arraignment, made by a prisoner detained in state custody, need not be excluded from evidence in a federal court unless the state arrest was made at the request of federal officers or unless the federal officers participated in determining the length of time the prisoner was to

[2] Indeed, the opinion of the Court of Appeals in the *Anderson* case, 124 F. 2d 58, 67 (6 Cir. 1941) strongly suggests that the defendants *were* interrogated by the sheriff and his deputies subsequent to arrest.

be detained prior to any arraignment, state or federal.[3] [fol. 1055] *Anderson* was based upon the Supreme Court's decision in *McNabb* v. *United States, supra*, and its determination was governed by the same considerations. In *McNabb* it was held that a confession secured in a two-day interval between arrest and arraignment could not be admitted in a federal criminal proceeding. The requirement of prompt arraignment is intended to protect a prisoner from intensive interrogation prior to the time a magistrate can determine whether there is any probable cause for detention and can inform the prisoner of his right to counsel and his right to remain silent. *Mallory* v. *United States*, 354 U. S. 449, 453-54 (1957). A federal defendant has been equally deprived of this protection whether his confession, exacted during detention prior to an arraignment, is made to a federal agent in a city, state or federal jail, or in a Tennessee Y. M. C. A.

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[3] The present *in banc* majority opinion appears to suggest that the rule set forth by the panel majority in the July 20, 1959 opinion hinged upon the fact that the state and federal officers had cooperated in the prior investigation of the crimes to which Coppola confessed while in state detention. A closer reading of the opinion of the panel majority will reveal that this is incorrect. We stated: "The only 'working arrangement' spelled out by the facts of that case [Anderson] is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter." (P. 1764.) The panel majority would have reached its result even if the federal-state cooperation in the earlier investigation of the crime had been absent. However, under the rule of law which I understand the *in banc* majority of this court here to announce; and assuming, *arguendo*, the validity of this rule of law, the fact of federal-state cooperation in the prior investigation of the crime has evidentiary significance and militates against the conclusion which the majority reach. If federal and state authorities have worked closely together in the investigation of a case there surely is likelihood that this cooperation continued in determining (1) whether a suspect is to be apprehended at all, (2) by which law enforcement agency the apprehension is to be made, and (3) how long the suspect is to be detained by the apprehending agency prior to arraignment. See discussion under part II, *infra*.

II

But even accepting, *arguendo*, the majority's improbable interpretation of *Anderson* v. *United States*, *supra*, I doubt that Coppola's confession was properly admitted. Contrary to what one might conclude from the statement of facts found in the majority opinion, I find many indications in the records of these two cases that Coppola's arrest by state officials would never have occurred on January 10 but for the insistence of the agent in charge of the FBI in Buffalo, and further indications that the manner of Coppola's detention on that day and night was designed, at least in part, to satisfy the desires of the FBI. In reaching this conclusion one needs to consider only the testimony of FBI agents and of officials of the Buffalo Police Department.[4]

[fol. 1056] Robbery of a bank that is a member of the Federal Reserve System is both a federal and a state crime. The robbery of the Manufacturers and Traders Trust occurred on February 15, 1956 and in the ensuing eleven months the FBI and the Buffalo police worked closely together in investigating it (R. 562-63). On January 4, 1957 the butcher shop of one Paul Redlinsky was robbed. On January 7, John Roche, agent in charge of the FBI's Buffalo office, telephoned John Golombeck, Chief of Detectives of the Buffalo Police Department, and informed Golombeck that the FBI had information that on January 4 Coppola and two others had robbed a butcher shop, proprietor unknown save for the first name "Paul" (R. 554). The Buffalo police then contacted Redlinsky. On January 8th from photographs supplied by the FBI Redlinsky identified Coppola as one of the participants in the robbery. There is no indication that any attempt was then made by the Buffalo police to arrest Coppola. On January 9th Roche personally went to Golombeck's office and informed Golombeck that the FBI possessed information that the three Redlinsky suspects intended to rob a tavern in East Buffalo on the following morning (R. 555). Immediately after this interview with

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[4] The record references cited hereafter are to the record in Docket No. 25177, the case dealing with the Manufacturers and Traders holdup.

Golombeck, Roche contacted John Dwyer, the District Attorney for Erie County, imparted the same information to him, and stated that Dwyer, " * * * might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another holdup" (R. 556). Roche at that time also informed Dwyer that Coppola was suspected by the FBI in connection with the Manufacturers and Traders Trust Co. robbery of Feb. 15, 1956 and the later Liberty Bank robbery of October 2, 1956 (R. 556). From Roche's activities on the t · it is a fair inference that the FBI desired that Coppola be taken into custody, for he was an FBI suspect, but that the custody be not a federal one. [fol. 1057] It is also a fair inference that this desire was so strong that both the Chief of Detectives of the City of Buffalo police and the Erie County District Attorney were independently informed of the impending holdup attempt. Since both Dwyer and Golombeck had been informed that Coppola was a suspect in the Manufacturers and Traders and Liberty Bank holdups, and since Coppola was indeed later interrogated by the FBI after his apprehension, one may conclude that the FBI agent-in-charge informed the state and city authorities at this very time that the FBI desired to interrogate Coppola once he had been taken into custody.

Further, the events occurring on the next day, January 10th, confirm the inference that the FBI's role in Coppola's arrest and detention was a more active role than one would surmise it to have been from the majority opinion. Between 9:30 and 9:45 A. M. Coppola and the two other suspects in the Redlinsky robbery were apprehended without warrant while driving in an automobile (R. 505). The apprehending officers were Golombeck and Harry Klenk, head of the homicide squad of the Buffalo Police Department, who seems to have participated in the arrest at Dwyer's instruction (R. 514b, 526). A subordinate police officer happened also to be present in the police vehicle (R. 535). Coppola and his companions were searched, as was their automobile, but nothing incriminating was found either in the car or on their persons (R. 530). The three were taken to Buffalo Police Headquarters, arriving at approximately 11:00 A. M. (R. 509). But shortly *before* they arrived Golombeck telephoned Roche informing him that the arrest

had been made (R. 555, 563).[5] Upon arrival at headquarters, [fol. 1058] contrary to the normal procedure whereby each prisoner upon arrival is taken to the detective bureau on the third floor for "booking," Coppola was taken directly to the cell block on the fourth floor (R. 527-29). The asserted justification for this departure from routine was the presence of newspaper photographers and television cameramen not merely on the first floor where one might reasonably expect them to be, but also upstairs on the third floor, where the detective bureau was located (R. 527-28, 536-37). After receiving Golombeck's call, Roche went to police headquarters, arriving there shortly before noon (R. 564). He was told that Coppola and his two associates had not been interrogated (R. 565). Thereupon Roche left the building to have lunch with Golombeck, Klenk, and Dwyer, their luncheon lasting until approximately 2:30 P. M.. (R. 565). With Roche remaining at police headquarters (R. 565), Klenk interrogated Coppola for approximately one hour (R. 519-20). In the course of this interrogation Klenk obtained verbal permission to search Coppola's home. At approximately 3:30 P. M. Dwyer and Roche commenced a joint interrogation of Coppola. After Dwyer questioned Coppola concerning the Redlinsky robbery, Roche asked

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[5] I believe that the issue of *when* the apprehending officers telephoned Roche to notify him of Coppola's arrest is of great importance. Surely if the apprehending state officers took the time to telephone the FBI agent-in-charge prior to the time these officers arrived at Police Headquarters, it is erroneous to state, as does the *in banc* majority, "The record shows that the state concentrated on its own business first." Golombeck testified that he did not recall the time of this telephone call (R. 536). On direct examination Roche testified unequivocally to the following:

> "Q. What is the next contact you had with the local authorities in regard to this matter? A. On the morning of January 10th at about 11:00 o'clock or shortly thereafter Chief Golombeck called me and told me they had arrested Coppola, D'Antuono and Simmons in the vicinity of the El Chico and that they were then on their way to police headquarters with them." (R. 555.)

Roche repeated this unequivocal testimony on cross examination by Coppola's counsel. (R. 56[illegible]4.) I conclude that the telephone call occurred prior to the arrival at police headquarters.

some questions concerning the Manufacturers and Traders robbery and then sought to obtain written permission to search Coppola's home (R. 557-58). Permission was re- [fol. 1059] fused, and the interrogation ended soon afterward. It was only thereafter, at approximately 3:45, that Coppola was taken down to the third floor to be booked (R. 518). And it was not until the morning of January 11 after Coppola had confessed during the night-time to the FBI agents that it officially appeared that Coppola was held by the City Police on something other than "suspicion."

From the facts recited above, I am left with the distinct impression that even as Roche was unwilling to leave the question of Coppola's arrest to the sole discretion of the Buffalo Chief of Detectives, so too he was unwilling to trust that officer to determine the course of Coppola's detention and interrogation after the arrest. I suggest that the arresting officers were instructed not to commence questioning Coppola nor even to book him until after the FBI's desires could be ascertained. I suggest further that the course of the afternoon's interrogation was determined at the meeting of Golombeck, Klenk, Dwyer and Roche at lunch, and that Roche had an important part in decisions there reached.

Thus I conclude that the FBI had a far greater role in Coppola's arrest and detention than the majority of this court is willing to state; and that the apprehension of Coppola without warrant in the morning and his detention without being booked until it was too late to arraign him that day, a conceded violation of New York State law, both demonstrate that the Federal and State officers worked out an arrangement between them so that the protection accorded federal suspects under *McNabb* v. *United States*, *supra*, could be circumvented.

Lastly, the majority would make much of the statement of Coppola's counsel made before the judge in one but not in both of the cases which they would construe as a concession against the interest of Coppola: "I do not claim that the Buffalo police made an arrest at the behest of the [fol. 1060] FBI." The statement is taken out of context and was made in the heat of trial, but even standing alone it is valueless as a concession. The word "behest" is synonymous

with *order* or *command* or *mandate*, and hence this purported concession still leaves untouched appellant's contention that his state apprehension and subsequent detention were at the *suggestion* and *request* of a federal officer.

I would reverse the convictions below and remand the cases for new trials.

[fol. 1061]

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Hon. Charles E. Clark, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Circuit Judges.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant.

ORDER EN BANC WITHDRAWING ORIGINAL OPINION AND VACATING PRIOR JUDGMENT—May 20, 1960

A petition for rehearing in banc having been granted herein and the court having heard oral argument thereon

Upon consideration thereof, it is

Ordered that the opinion of this court of July 20, 1959 be and it hereby is withdrawn.

Further ordered that the judgment of this court dated July 20, 1959, be and it hereby is vacated and that a judgment be entered on the opinion of this court rendered May 20, 1960.

A. Daniel Fusaro, Clerk.

[fol. 1062]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge; Hon. Charles E. Clark, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Circuit Judges.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant.

JUDGMENT OF AFFIRMANCE—May 20, 1960

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1062a]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 118—October Term, 1958

(Argued March 9, 1959)

Docket No. 25257

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

JOSEPH SIMMONS, a/k/a Joseph Synakowski, JAMES MILLIO and FRANK R. COPPOLA, Defendants-Appellants,

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, and CARMELO J. GIAMBRA, Defendants.

OPINION—July 20, 1959

Before: Washington, Waterman and Moore, Circuit Judges.

Appeal by defendants Simmons, Millio and Coppola from convictions, after a jury trial, Western District of New York, Morgan, *J.* Simmons and Millio were convicted of robbing a member bank of the Federal Reserve System in violation of 18 U. S. C. §2113(a) and (b). Coppola was convicted of aiding and abetting Simmons and Millio in violation of 18 U. S. C. §§2, 2113(a) and (b). Affirmed as to Simmons and Millio. Reversed and remanded as to Coppola.

[fol. 1063] Leo J. Fallon, Asst. U. S. Attorney, W. D. N. Y., Buffalo, N. Y. (John O. Henderson, U. S. Attorney, W. D. N. Y., Buffalo, N. Y, on the brief), for plaintiff-appellee.

William D. O'Neill, Buffalo, N. Y., for defendant-appellant James Millio.

William B. Mahoney, Buffalo, N. Y., for defendant-appellant Frank Coppola.

Charles J. McDonough, Buffalo, N. Y., for defendant-appellant Joseph Simmons.

WATERMAN, Circuit Judge:

On October 2, 1956 the Linwood Branch of the Liberty Bank of Buffalo, New York, a member bank of the Federal Reserve System, was held up and robbed. On February 4, 1957 a six-count indictment was filed charging the appellants herein, Frank R. Coppola, Joseph Simmons and James Millio, and Dario D'Antuono and Carmelo Giambra with the commission of the crime. The first three counts charged Simmons, Millio, D'Antuono and Giambra with actual physical participation in the robbery, in violation of 18 U. S. C. §2113(a) and (b). Counts four, five and six charged Coppola with aiding, abetting and counseling these four, in violation of 18 U. S. C. §§2, 2113(a) and (b). D'Antuono and Giambra pleaded guilty. The appellants went to trial. A jury found them all guilty as charged on December 3, 1957.

Defendant Coppola

During the course of the trial a member of the FBI, Gordon Eddy, was produced as a witness by the Government. He sought to give testimony relative to an oral [fol. 1064] confession made to him by Coppola. The latter moved to have this evidence suppressed, but after a hearing conducted out of the presence of the jury the district court permitted the testimony. As was proper, however, it carefully instructed the jury that Eddy's testimony relative to Coppola's oral confession was not to be considered binding upon Simmons or upon Millio.

The evidence produced at that hearing reveals that the oral admissions testified to by agent Eddy were made at the same time and under the same circumstances as those described in *United States* v. *Frank R. Coppola*, —— F. 2d —— (2 Cir. 1959), decided this day. Therefore, for the reasons given in that decision, we hold that the testimony was improperly allowed against Coppola and that he is entitled to a new trial.

Defendant Simmons

The Government also offered evidence as to admissions, oral and written, made by Simmons during his period of incarceration. Prior to the admission of such evidence a preliminary hearing was held for the purpose of determining whether the admissions were involuntary as a matter of law. After hearing testimony by both sides the district court decided that they were not.

Simmons contends on this appeal that the district court failed to properly submit to the jury the question of whether these admissions were voluntary, since it failed to give adequate instructions at the close of the trial. Although Simmons submitted written requests to charge and they were all granted, he made no request for a charge relative to the issue of the voluntariness or involuntariness of his admissions. Thus, in order to reverse on this contention we must find that whatever error the district court may have committed in this respect constituted a miscarriage [fol. 1065] of justice. *Herzog* v. *United States*, 235 F. 2d 662 (9 Cir. 1956), *cert. denied*, 352 U. S. 844 (1956); *United States* v. *Rappy*, 157 F. 2d 964 (2 Cir. 1946), *cert. denied*, 327 U. S. 806 (1947). The power granted in Criminal Rule 52(b) must be exercised with care so as not to nullify the salutary impact of Rule 30. See *Herzog* v. *United States*, *supra*; *Cave* v. *United States*, 159 F. 2d 464 (8 Cir. 1947), *cert. denied*, 331 U. S. 847 (1947), *rehearing denied*, 332 U. S. 786 (1947). An examination of those portions of the charge dealing with the requirement of voluntariness[1] con-

[1] In its charge to the jury the district court said:

"[The Government contends] that Simmons' admissions made by him voluntarily, without intimidation, without co-

vinces us that, though the instructions given were imperfect, they did not constitute error justifying invocation of Rule 52(b).

Simmons' next contention is that the district court erroneously admitted as to him the testimony of W. C. Buyers, [fol. 1066] 111, concerning the witness's post-conspiracy conversations with the defendant Coppola. We quote the only testimony of that witness we have found which refers to Simmons and thus could prejudice him. In reference to a conversation held without the presence of Simmons, the following took place:

> "Q. Mr. Buyers, you told about a conversation you had with Frank Coppola on November 26th, 1956. Do you recall that? A. Yes, sir.
>
> "Q. You were telling what Mr. Coppola told you relative to the people involved in that robbery. I believe you named Carmen and Danny and Joe was brought in, is that right? A. Yes.

---

ercion * * * are sufficient, with the corroborating evidence, to connect him with a commission of this crime beyond reasonable doubt. * * * The defendants contend, through their counsel, that any confessions given or any admissions made were a result of such a set of circumstances as to constitute an involuntary act on the part of each defendant, and should be disregarded. When such a conflict of testimony occurs, we ask of our citizens that sit in a jury box * * * to give a fair and thorough consideration to the evidence offered, to the law as applied, and let their verdict follow accordingly."

* * * * *

"We have another matter which has been the subject of some argument and that is the question of the weight to be given confessions or admissions. I think I can best express it in this language: A confession is an admission by a defendant of the facts constituting the crime charged. A statement less than an admission of all of the facts charged would be a partial confession. But the same rule applies to each. The very nature of a confession requires that the circumstances surrounding it be subject to careful scrutiny in order to determine whether it was voluntarily made."

* * * * *

"I have so charged about three times, but I charge again each confession or statement, if you find a voluntary statement, is evidence only as to that purpose."

It seems plain to us, and it must have appeared equally obvious to the jury, that "Joe" was the defendant Joseph Simmons. We cannot, however, reverse on the basis of this, for, looked at in context, it seems "harmless error." Fed. Rules Cr. Proc. rule 52(a). Both before and after the challenged testimony on numerous occasions during the course of the trial, and in its charge, the district court instructed the jury that post-conspiracy admissions were not to be considered binding on codefendants who were not present when the admissions were made.[2] No doubt had Simmons so requested he could have had yet another instruction on this point when the above quoted conversation slipped into evidence. Before this reference to "Joe," Simmons made two objections to the testimony of the witness Buyers, one a "continuing objection"; but he sat quietly when Buyers made the reference to "Joe" that he now complains of.

[fol. 1067] Moreover, even if we were of the opinion that the jury was unaware of the proper treatment to be given this statement by Buyers, we would not be justified in reversing Simmons' conviction. Simmons' guilt was shown by his own admissions and by the testimony of his accomplice D'Antuono. The chances are ridiculously slight that the jury would have reached a different verdict if they had not heard this reference to "Joe."

The last point made by Simmons is that the district court committed reversible error when, in a claimed violation of the rule contained in *Jencks* v. *United States*, 353 U. S. 657 (1957) and in violation of 18 U. S. C. §3500, it denied defendant access to certain information. A. J. Moritz, the manager of the robbed bank, was the first witness called by the Government. On direct examination he testified concerning the events of October 2, 1956, the day of the robbery. On cross-examination Simmons brought out the fact that Moritz had talked to the FBI about those events and that the FBI had taken notes thereof. Simmons then moved to have the Government produce all written statements of the witness made to the FBI, and all of the

---

[2] See pages 327, 330, 766-67, 774, 822, 922, 1003 and 1010 of the record. The quoted testimony occurs on page 557.

FBI memoranda. The Government requested that a signed statement of the witness be withheld from the defendants because it did not bear upon Moritz's testimony. The court agreed and withheld that statement and, additionally, portions of the FBI notes. The remainder of the notes were given to defendant. Later the court rescinded the order with respect to the notes and made them available to the defendant in their entirety. Thus, defendant's claim of error with respect to the testimony of this witness as to the events of October 2 must center on the withheld signed statement. As required by 18 U. S. C. §3500(c) that statement has been preserved by the United States and is before us on this appeal. It clearly does not relate "to the subject matter of the testimony of the witness." 18 U. S. C. §3500 [fol. 1068] (c). It contains only a declaration by Moritz that he had not packaged any twenty dollar bills immediately prior to the robbery and that as a rule he did not handle or package money in the course of his duties. The district court committed no error in withholding it from defendant.

Later in the trial Moritz was recalled as a government witness and testified for the first time with respect to the events occurring on October 8, 1956, six days after the robbery. Those events were the deposit on that day by Carmelo Giambra of $1,900 in twenty dollar bills and the discovery by two bank employees that one of the deposited bills was stamped with abbreviations indicating that it was packaged in the Linwood Branch on October 2, 1956. On cross-examination it was brought out that Moritz had been interrogated by Agent Jenkins of the FBI with respect to the events of October 8 and that Jenkins had taken notes of this conversation. No motion was made, however, at this time to have those notes produced; thus defendant cannot now contend that the fact that he did not then receive them constitutes reversible error. *United States* v. *Tellier*, 255 F. 2d 441 (2 Cir. 1958), *cert. denied*, 358 U. S. 821. Subsequently, during Jenkins' cross-examination, defendant Coppola made a motion to have the Government produce the notes of the Moritz conversation dealing with the events of October 8, and the motion was denied. But the denial of Coppola's motion should not give Simmons standing to complain on this appeal that the denial prejudiced

him. And even if Simmons does have such a standing we would have to hold the denial proper. The notes made by Jenkins of his conversation with Moritz did not constitute a "statement" of the witness Jenkins within the language or the meaning of 18 U. S. C. §3500 or *Jencks* v. *United States*, 353 U. S. 657 (1957). The "statement" is that of Moritz. If defendant intended to recall Moritz and use the Jenkins notes in a further attempt to impeach Moritz [fol. 1069] that should have been made clear to the district court when the request was made.

Simmons also contends in this brief that, though requested, a signed statement by another bank employee, Joan Trapp, and FBI notes concerning an interview with another Government witness, Mrs. Durmeyer, were not furnished to the defense. However, the record clearly shows that the Trapp statement and the entire Durmeyer notes were made available before the evidence was closed.

Defendant Millio

The main point urged by defendant Millio is that the district court erred in admitting into evidence against him certain alleged admissions supposedly made to third persons after the date of the crime and out of the presence of Millio. The only admissions we can find which contain a reference to Millio are those of the defendant Simmons. Agent Liddy of the FBI testified on November 25, 1957 concerning oral admissions by Simmons, and at the close of this testimony Millio moved the court to instruct the jury to disregard this testimony insofar as Millio was concerned. The court denied this motion, but the next day it corrected that error by explicitly instructing the jurors that the testimony of Agent Liddy was to be considered by them solely in their determination of the guilt or innocence of defendant Simmons—that it was not to be considered by them as bearing upon the guilt or innocence of Millio or of Coppola. A few minutes later, when the Simmons written confession obtained by Agent Eddy was read into the record, the court repeated its instruction. It even went so far as to request any juror who didn't understand the court to please raise his hand. Finally, in its charge to the jury at the close of the trial, the court twice more restated the

same instruction. We think that these directions were sufficiently clear and that despite the court's original mis-[fol. 1070] step it was reasonably possible for the jury to follow them. *United States* v. *Simone*, 205 F. 2d 480 (2 Cir. 1953). Consequently the admission into evidence of the oral and written confessions of Simmons does not constitute reversible error. *Delli Paoli* v. *United States*, 352 U. S. 232 (1957).

Millio also attacks the action of the trial court for applying the provisions of 18 U. S. C. §3500 when it ruled upon questions relative to the production by the Government of statements made prior to trial by prosecution witnesses and his right to inspect such statements. The robbery occurred on October 2, 1956. The defendants were not tried until after 18 U. S. C. §3500 became law on September 2, 1957. Millio appears to claim that the statute is itself unconstitutional, because it modifies the reach of the decision in *Jencks, supra.* He also maintains that its application in this trial was a prohibited *ex post facto* application.

There is no merit in either of these contentions. 18 U. S. C. §3500 may limit Jencks, but that does not make the statute unconstitutional. *Palermo* v. *United States*, 79 S. Ct. 1217 (1959); *Rosenberg* v. *United States*, 79 S. Ct. 1231 (1959); *United States* v. *Spangelet*, 258 F. 2d 338 (2 Cir. 1958); *United States* v. *Grunewald*, 162 F. Supp. 621 (S. D. N. Y. 1958). And it may validly be applied during trials of defendants charged with crimes committed before its enactment. *Palermo* v. *United States, supra; Rosenberg* v. *United States, supra; United States* v. *Papworth*, 156 F. Supp. 842 (N. D. Tex. 1957), *aff'd*, 256 F. 2d 125 (5 Cir. 1958), *cert. denied*, 358 U. S. 854 (1958), *rehearing denied*, 358 U. S. 914 (1958); *Bergman* v. *United States*, 253 F. 2d 933 (6 Cir. 1958); *Lohman* v. *United States*, 251 F. 2d 951 (6 Cir. 1958).

Another contention, that Millio's guilt had not been demonstrated beyond a reasonable doubt, is unconvincing in view of the inclusive testimony of the accomplice D'Antuono, who after having pleaded guilty took the stand [fol. 1071] as a government witness. Clearly the court did not err in denying appellant's motion for a judgment of acquittal on that ground.

Though he did not request the charge at trial Millio now contends that the district court erred because it did not specifically instruct the jury that his guilt or innocence was to be determined by them on the sole testimony of the accomplice D'Antuono—i.e., that unless they accepted D'Antuono's testimony Millio could not be found guilty. We can only conjecture why the appellant maintains that the failure to charge the jury in these exact words warrants a reversal of the conviction under Rule 52, F. R. Crim. Proc. We have already pointed out that the court informed the jury that the Simmons admissions to Agents Liddy and Eddy were not competent evidence against Millio and repeatedly instructed that post-conspiracy admissions were not binding on codefendants who were not present when the admissions were made. And an examination of the minutes of the trial convinces us that upon the competent evidence properly admitted against Millio the jury could well have found him guilty beyond a reasonable doubt. It may be that appellant's claim of error is based on a contention that the jury was not adequately warned of the danger of accepting accomplice testimony and relying upon it. However, we think the record shows that adequate warning was given. Moreover, if Millio is maintaining that the district court should have specifically marshaled the evidence for and against him for the benefit of the jury we need only point out that no such duty is imposed upon federal trial judges. *United States* v. *Owens*, 263 F. 2d 720 (2 Cir. 1959); *United States* v. *Cohen*, 145 F. 2d 82 (2 Cir. 1945), *cert. denied*, 323 U. S. 799 (1945).

Defendant was the driver of the escape car the robbers used. He contends that as he did not enter the bank with [fol. 1072] his fellows he should not have been convicted of having participated in the robbery. This claim is, of course, entirely without substance. See 18 U. S. C. §2.

The conviction of Coppola is reversed and the cause remanded as to him. The convictions of Simmons and Millio are affirmed.

SEPARATE STATEMENT OF MOORE, Circuit Judge:

I concur in the affirmance of the convictions of Simmons and Millio. I dissent from the reversal of the conviction of Coppola. My dissenting opinion will be filed later.

[fol. 1073] Filed: December 4, 1959.

MOORE, Circuit Judge (dissenting opinion):

See dissenting opinion in *United States of America* v. *Frank R. Coppola,* Docket No. 25177, filed December 4, 1959.

[fol. 1074]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: Hon. George T. Washington, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

JOSEPH SIMMONS, a/k/a Joseph Synakowski, FRANK R. COPPOLA, JOSEPH MILLIO, Defendants-Appellants

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, CARMELO J. GIAMBRA, Defendants.

JUDGMENT—July 20, 1959

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgments of said District

Court as to Joseph Simmons and James Millio be and they hereby are affirmed.

Further ordered that the judgment of said District Court as to Frank R. Coppola be and it hereby is reversed and that said action be and it hereby is remanded in accordance with the opinion of this court.

A. Daniel Fusaro, Clerk.

[fol. 1075]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

(Argued March 9, 1959
Original Opinion Filed July 20, 1959.)

(Reargued before the Court *en banc*, December 15, 1959
Decided May 20, 1960.)

Docket No. 25257

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK R. COPPOLA, Defendant-Appellant.

OPINION—May 20, 1960

Before: Lumbard, Chief Judge, Clark, Waterman, Moore and Friendly, Circuit Judges.

Appeal from a judgment of the United States District Court for the Western District of New York, Justin C. Morgan, *J.*, after a jury trial in which the defendant was convicted of violating 18 U. S. C. Section 2113(a) and (b).

Affirmed.

[fol. 1076] James W. Knapp, Staff Assistant, Department of Justice, Washington, D. C. (John O. Henderson, United States Attorney, Western District of New York, Buffalo, N. Y., Leo J. Fallon, Special Assistant United States Attorney, Western District of New York, Buffalo, N. Y., on the brief), for plaintiff-appellee.

William B. Mahoney, Buffalo, N. Y., for defendant-appellant.

MOORE, Circuit Judge:

Since we have concluded this day (see *The United States of America* v. *Frank R. Coppola*, No. 25177), that there was no error in the receipt in evidence of Coppola's admissions, and since the other issues raised by Coppola's appeal are identical to those treated by Judge Waterman in his opinion affirming the convictions of Joseph Simmons and James Millio (see opinion in *The United States of America* v. *Joseph Simmons, a/k/a Joseph Synakowski, James Millio and Frank R. Coppola*, No. 25257, filed on July 20, 1959), the judgment of conviction of Frank R. Coppola is affirmed.

CLARK and WATERMAN, Circuit Judges, dissent:

See dissenting opinion in *The United States of America* v. *Frank R. Coppola*, No. 25177.

[fol. 1077]

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Hon. Charles E. Clark, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

JOSEPH SIMMONS, a/k/a Joseph Synakowski, FRANK R. COPPOLA, JAMES MILLIO, Defendants-Appellants,

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, CARMELO J. GIAMBRA, Defendants.

ORDER EN BANC WITHDRAWING ORIGINAL OPINION AND VACATING PRIOR JUDGMENT—May 20, 1960

A petition for rehearing in banc having been granted herein and the court having heard oral argument thereon

Upon consideration thereof, it is

Ordered that the opinion of this court of July 20, 1959 as to Frank R. Coppola be and it hereby is withdrawn.

Further ordered that the judgment of this court as to Frank R. Coppola dated July 20, 1959 be and it hereby is vacated and that a judgment as to Frank R. Coppola be entered on the opinion of this court rendered May 20, 1960.

A. Daniel Fusaro, Clerk.

[fol. 1078]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge; Hon. Charles E. Clark, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

JOSEPH SIMMONS, a/k/a Joseph Synakowski, FRANK R. COPPOLA, JAMES MILLIO, Defendants-Appellants,

—and—

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono, CARMELO J. GIAMBRA, Defendants.

JUDGMENT OF AFFIRMANCE—May 20, 1960

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment as to Frank R. Coppola of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 1078a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1079]

SUPREME COURT OF THE UNITED STATES

No. 153—October Term, 1960

FRANK R. COPPOLA, Petitioner,

—v.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed October 10, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SUPREME COURT, U.S.
FILED
JUN 17 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~1018~~ 153

FRANK R. COPPOLA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

FRANK R. COPPOLA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLIAM B. MAHONEY,
Attorney for Petitioner,
Buffalo, New York.

BATAVIA TIMES LAW PRINTERS,
BATAVIA, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

FRANK R. COPPOLA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

FRANK R. COPPOLA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Your petitioner prays that writs of certiorari be issued to review the two (2) judgments of the United States Court of Appeals for the Second Circuit, dated May 20, 1960, wherein the said Court affirmed separate judgments of conviction of the District Court for the Western District of New York, entered therein on July 11, 1957 and December 30, 1957. The judgments of the District Court convicted the petitioner, Frank Coppola, of violating 18 U. S. C. § 2113 (a) and (b). On each judgment, the petitioner was sen-

tenced to 20 years' imprisonment, the second of said judgments to run consecutively.

Both appeals, at the direction of the Court of Appeals, were argued the same day.

On July 20, 1959, the Court of Appeals for the Second Circuit reversed both judgments of conviction, one Justice dissenting, and remanded both cases for a new trial (A-II-1)*. The Government applied for and secured an order granting a hearing *en banc* in both cases (A-II-44). After re-argument, before five (5) active Judges of said Court, the original reversal of said judgments was set aside and the Court affirmed the judgments of the District Court, with two (2) Judges dissenting (A-II-55 to 73).

The judgments of conviction, against petitioner, have been affirmed in both cases; the writ of certiorari herein sought in both cases is to the same court, and the identical question is raised in both cases.

Opinions Below

The District Court did not render an opinion. Copy of the opinion of the Court of Appeals, dated July 20, 1959, reversing both convictions, as well as the dissenting opinion, dated December 4, 1959, neither of which are officially reported, are hereby appended as Appendix A (pp. 16-32).

Copies of the majority and dissenting opinions, dated May 20, 1960, in both cases, neither of which are officially reported, are hereby appended as Appendix B (pp. 33-62).

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* Capital Letters refer to certified Appendix.
Roman Numerals refer to volume of certified Appendix.
Numerals refer to pages in specified volume of Appendix.
R refers to original Record; numerals in parentheses refer to certified stenographic record.

Jurisdiction

The jurisdiction of the Supreme Court of the United States is invoked upon the following grounds:

(i) The judgment of the Court of Appeals was dated and entered May 20, 1960.

(ii) The jurisdiction of the Court to review the judgments herein by Writs of Certiorari is conferred under Sections 1 and 2 of Article III of the Constitution of the United States; Section 1254(1) of Title 28, U. S. C.; Rules 19(1) (a) (b), 21, 22 and 23(5) of the Rules of the Supreme Court of the United States.

Question Presented

Whether, under the rule of *Anderson, et al. v. United States,* 318 U. S. 350, confessions, oral and written, obtained by Federal agents during a lengthy illegal detention, resulting from a "working agreement" between Federal and local police, were admissible in evidence.

Statutes Involved

The pertinent statutory provisions and Federal Rules of Criminal Procedure are printed in Appendix C (pp. 63-64).

Statement

First Case: M and T Bank robbery—February 15, 1956:

On February 15, 1956, the Clinton-Bailey Branch of the Manufacturers and Traders Trust Company in Buffalo, New York was held up by two men. The men escaped with approximately $52,529.00 of United States currency. This

bank was insured by the Federal Deposit Insurance Company.

On or about February 25th or 27th, 1956, the defendant Coppola was brought to the Manufacturers and Traders Trust Company by agents of the Federal Bureau of Investigation for the purpose of having the events of the holdup re-enacted. This was pursuant to a pre-arrangement between Albert J. Eger, branch manager of the Clinton-Bailey branch of the bank, and members of the F. B. I. The defendant Coppola put on a stocking mask and the F. B. I. agents gave him instructions as to what he was to do. He approached the branch bank manager, then proceeded toward the work cages, followed by F. B. I. agents; that he was back of the cages for three or four minutes and then retraced his steps to the manager's desk and then went into the hallway of the bank.

No arrest was made of the defendant after the re-enactment of the holdup, charging him with being one of the participants in the same.

On January 7, 1957, approximately eleven (11) months after the re-enactment of the holdup, John F. Roche, Special Agent of the F. B. I. in Buffalo, New York, contacted John Golombeck, Chief of Detectives of the Buffalo Police Department, as to information concerning an alleged unsolved crime outside the jurisdiction of the Federal authorities (A-I-111). Again on January 9, 1957 Agent Roche contacted Golombeck, Chief of Detectives, and relayed to him information concerning a contemplated holdup. On January 10, 1957 Agent Roche received a telephone call from Golombeck to the effect that "the defendant Coppola and others had been *arrested* and they were on their way to police headquarters with them" (A-I-112). Agent Roche informed the Erie County District Attorney, Dwyer,

of the same information on January 9, 1957 and, in addition, told the said Dwyer that the defendant was being investigated by the F. B. I. in connection with the robbery of the Manufacturers and Traders Trust Company (A-I-112, 113).

On January 10, 1957 Agent Roche went to Buffalo Police Headquarters *shortly before noon;* that he saw Chief Golombeck, District Attorney Dwyer, and Detective Klenk and had lunch with them (A-I-119); that he returned to police headquarters at 2:30 P. M. with District Attorney Dwyer and at 3:30 P. M. saw the defendant in the cell block and questioned him about the M & T bank robbery (A-I-113, 114, 120); that shortly before 9:00 P. M. on the same day he assigned Special Agents Eddy and Jenson to interview Coppola; Agents Moulin and Jenkins to interview D'Antuono, and Agents Obuhanick and Liddy to interview Simmons (A-I-115).

Agent Roche further testified that he and other F. B. I. agents were investigating the robbery of the Clinton-Bailey branch of the Manufacturers and Traders Trust Company from February 15, 1956 up to and including *January 7, 1957;* that the F. B. I. worked very closely with the Buffalo Police Department in this particular investigation (A-I-117); that if he had information they wanted to work on mutually they would assign a detective and an agent to work together on it (A-I-118).

Agent Roche expected a call from Detective Chief Golombeck if anything developed (A-I-121). That defendants, after arraignment in City Court, were turned over to Federal authorities around four (4) o'clock on January 11, 1957, and were arraigned before Commissioner Butterfield (A-I-117).

On January 10, 1957, the defendant and others were arrested and taken to police headquarters where they were lodged in cells and no charge was placed against defendant during the entire day (A-I-78, 79). On January 11, 1957 a charge was placed against the defendant at 1:00 P. M. and defendant was arraigned in the City Court of Buffalo on January 11, 1957 at approximately 2:00 P. M. There was no warrant for the arrest of the defendant prior to 2:00 P. M. on January 11, 1957. It was conceded that defendant had been arrested and held on *suspicion* from 10:00 o'clock on the morning of January 10, 1957 until ten minutes to one o'clock in the afternoon of January 11, 1957 (A-I-79, 81, 82). That at about 10:00 o'clock on January 11, 1957 the F. B. I. requested custody of defendant and others. There was no compliance with this request. After arraignment in the City Court of Buffalo the defendant was delivered into the custody of Mr. Henderson, United States Attorney (A-I-88, 89).

Detective Klenk identified Government's Exhibit 41, and the same was marked in evidence. This was the daily memoranda of arrests used in the Buffalo Police Department to record the time a person is brought in, his name, age, the charge, the arresting officers, and the final disposition (A-I-84, 85). That the time of day recorded on Exhibit 41, as to defendant Coppola, namely 3:45 P. M. and 4:15 P. M., indicated the time that the defendant was brought down the cell block and officially put on the memoranda of arrests in the afternoon of that day (A-I-92, 93).

That the charges of 2124 and 404 of the Penal Law were made on Exhibit 41 on January 11, 1957 and the designation of 3:45 and 4:15 P. M. on Exhibit 41 did not indicate the time that such charges were made against the defendant (A-I-95, 96).

Klenk further testified that on January 10, 1957, between the hours of 9:00 P. M. and 12:30 P. M., he went to the cell block to question defendant. That each time members of the F. B. I. were questioning him. That he refrained from questioning defendant because of the policy of courtesy extended to officers of the F. B. I. and other law-enforcing agencies (A-I-91).

John C. Golombeck, Chief of Detectives, Buffalo Police Department, testified that he received information from F. B. I. Agent Roche on January 7th, 9th and 10th, 1957. That on January 10, 1957 he was in a car with Detectives Klenk and Segit; that the car in which defendant was riding was directed to pull over, *on suspicion;* that no crime was being committed at that time (A-I-97, 98). That defendant and others were taken to police headquarters and to circumvent the press and the taking of pictures the defendant and others were taken to the fourth floor and placed in a cell block.

He testified that he placed a charge against Coppola on the afternoon of January 10, 1957 around 3:30 or 4:00 o'clock; that he did not make the notation on Exhibit 41 as to the time; that he was pretty sure that his relief man placed the time (A-I-100, 102).

When his attention was called to the fact that there was testimony that the time on Exhibit 41 represented the time that defendant was brought from the cell block to the detective bureau he said, "Well, then, it must be so" (A-I-103).

He called F. B. I. Agent Roche to let him know he apprehended defendant and others; that his department works hand in hand with the F. B. I. (A-I-106).

In the afternoon of January 10, 1957 he saw several F. B. I. agents in Buffalo Police Headquarters, and again at night on the same day he saw a number of F. B. I. agents there; that in the evening he couldn't interrupt the F. B. I. agents who were questioning defendant, although he remained at headquarters until 12:30 A. M. (A-I-100, 102).

Elmer F. Moulin, an F. B. I. agent, went to police headquarters in Buffalo just prior to 8:00 P. M. and was there until midnight. He was accompanied by another agent, Frank Jenkins. He saw other members of the F. B. I. there including Messrs. Eddy, Jenson, Obuhanick, Liddy and Roche (A-I-107-109).

Robert Gordon Eddy, Special Agent of the F. B. I., testified that he learned at about noon of January 10, 1957 that Coppola had been taken into custody by the Buffalo Police Department on that day. That he and Agent Jenson went to the Buffalo Police headquarters about 8:00 P. M. of the same day (A-I-7, 8); that at headquarters there were five other agents and Mr. Roche; that a show-up was in progress when he arrived; that at about 9:00 P. M. defendant was brought out and he and Agent Jenson interviewed defendant until shortly after 12:45 A. M. on January 11, 1957 (A-I-9-11). That the office wherein he questioned defendant was barricaded and he could see other agents in another room interviewing others (A-I-12); that he knew defendant was arraigned on January 11, 1957; that he did not place any charge against defendant; that he had no warrant for defendant's arrest (A-I-13-15).

Upon being recalled the next day by the Government he testified that the defendant made no complaints about lack of food or drink; he didn't say he was mentally or physi-

cally tired and didn't appear to be nervous or afraid; that the interview commenced at 9:04 P. M. and at 9:41 the defendant started to tell Agent Eddy about crimes he was involved in; that during the interview District Attorney Dwyer came into the room and also Special Agent Roche and Agent Jenkins came to the door of the room where the questioning was being conducted (A-I-27-29). At 11:37 P. M. he started the statement (Government's Exhibit 43) and at this juncture he was not again advised orally of his rights. That between 9:02 and 9:41 P. M. the agents told defendant of some of the evidence they had developed (A-I-30, 31); that they asked defendant the part that his wife and mother had in the Manufacturers and Traders Trust Company robbery and they couldn't answer his questions as to whether the agents intended to arrest his wife and mother (A-I-35); that Agent Eddy prepared the first two paragraphs of Exhibit 43 and defendant dictated the balance (A-I-38).

Agent Jenson's testimony substantially corroborated Mr. Eddy (A-I-39-46). He testified that there was a short discussion about defendant's mother and wife being involved and if he was assured that they would not be prosecuted he would sign a statement (A-I-45).

On the preliminary hearing, without the jury's presence, the petitioner testified that on January 10, 1957, at about 10:00 A. M., he was in an automobile on Clinton Street in the City of Buffalo, New York when a shotgun was pointed at him and he and others were told to "stick up their hands". He was taken to Buffalo Police Headquarters and put in a cell. He asked for food and was told, "This isn't a cafeteria, we didn't ask you to come up here." (A-I-47). He was interrogated throughout the day as well as being placed in a "lineup" on several occasions. He asked

to use the telephone, and this request was denied. He asked to call his lawyer and the response was, "Where do you think you are, in a hotel?" He was further told, "Well, we don't feed around here." Later, he gave money for food and received a tunafish sandwich which he had to throw away. They gave him milk and then took it from him. He again asked for food, at nighttime, and was told "they didn't serve meals up there" (A-I-49-51, 53).

He testified that Agent Eddy, who had interrogated him a year previously, and Jenson had him brought into the office of the cell block at police headquarters about 8:00 or 8:30 P. M. Eddy told the defendant that his mother and wife were in a Niagara Falls jail. He asked to see the United States Attorney and a Federal Judge, both of which requests were denied (A-I-55). They told the defendant several times that if he signed a statement they would recommend that the case against his mother and wife be dropped (A-I-57). Agent Eddy prepared a statement; the defendant repeatedly told him he knew of no facts (A-I-59); up to the time of signing the statement he had no food or drink. He made the statement involuntarily because he was told his mother and wife were suffering and he was advised by the F. B. I. that the only way they could be released was to give a statement (A-I-61).

On cross examination he testified that he made requests for a lawyer to Agents Eddy and Roche, Detective Chief Golombeck, Detective Klenk, the turnkey, and several other officers (A-I-66).

At the conclusion of such testimony the Court stated that it would not hold that the confession was involuntary as a matter of law, but would submit such question to the jury as a question of fact (A-I-130). Also, the Court held as a matter of law that there was no unusual delay in the ar-

arraignment of defendant (A-I-128). The Court also refused to submit the question of the unreasonableness of the delay to the jury as a question of fact (A-I-174).

Upon resumption of trial before Court and jury, Agent Eddy testified as to the conversation he had with petitioner on the evening of January 10, 1957 shortly after 9:00 P. M. and continuing until 12:54 A. M. on the following morning. He also testified as to the preparation of a statement and the signing of the same by petitioner. This statement (Exhibit 43) was received in evidence over petitioner's objection (A-I-143).

On cross examination, Agent Eddy admitted he was conversant with the details of the robbery of the M & T Trust Company since February 15, 1956; that he learned of such details from employees of the bank (A-I-146, 147, 155-159). Further, he admitted that in his conversation with petitioner he was telling petitioner of facts that he had learned from outside sources (A-I-162). He never charged petitioner with any violation relative to the robbery of the M & T Trust Company; he never demanded that petitioner be released into his custody (A-I-169).

Second Case: Liberty Bank Robbery—October 2, 1956:

On October 2, 1956 three (3) men entered the Linwood-North branch of the Liberty Bank of Buffalo and proceeded to stage a robbery of the said bank to the extent of $23,775.10 in United States currency. The men escaped with the assistance of an automobile driven by a fourth man who waited outside the bank. Between January 1, 1957 and January 10, 1957 John A. Roche, Special Agent in charge of the Buffalo office of the F. B. I., was conversant with the facts surrounding the aforesaid bank holdup on October 2, 1956 and also all the statements made in

November and December 1956 concerning such holdup, including those of William Buyers III, a deputy sheriff (896, 897) (A-I-121).

The indictment against the petitioner, *et al.*, relating to the above crime was tried approximately six (6) months subsequent to the first case.

A preliminary hearing was held by the Trial Court, without the presence of the jury, and the same members of the F. B. I. and the Buffalo police who had testified at the first trial testified on such hearing. The evidence produced was substantially the same as was produced at the first trial. Motions to suppress the oral and written admissions of petitioner on the basis of unreasonable delay in arraignment and involuntariness were denied by the Court (A-I-129, 130). The Court not only held that as a matter of law there was no delay in arraignment of petitioner, but upon request from the Government it also found *as a matter of fact* that there was no working agreement between the F. B. I. and the Buffalo police with respect to the arrest and detention of petitioner (A-I-130).

Specifications of Errors To Be Argued

I. That the Court below misinterpreted the rule in *Anderson v. United States*, 318 U. S. 350; and further erroneously distinguished the factual situation in the present cases from those in *Anderson v. United States (supra)*.

II. That the Court below erred in holding an oral or written confession admissible where such confession was obtained during an illegal detention resulting from a working arrangement between the Federal and local authorities, prior to arraignment.

III. In affirming both judgments of conviction of the District Court.

Reasons For Granting The Writ

1. The decisions of the Court below in the instant cases are in conflict with the decision rendered in *Anderson, et al. v. United States*, 318 U. S. 350.

In the latter case, the arrest of the strikers was initiated by the sheriff; the arrest in our present cases resulted from a telephone conversation from the Federal Agent-In-Charge at Buffalo to the Buffalo Police Department. The arrests in the instant cases and in the *Anderson* case were made without warrant and by local or State officers; and the admissions in both cases were obtained while the confessors were in the custody of such local or State officers. In *Anderson, et al. v. United States*, there was no evidence of collaboration between the sheriff and Federal officers *prior* to the arrest of the defendants. In the instant cases, the Federal agents admitted that *prior* to the arrest of petitioner the Buffalo police had co-operated with the Federal officers investigating the bank case; that both Federal and local officers had worked the case mutually, and that they had assigned a Federal agent and a detective to work out information in their possession (A-I-117-118). This Court held, on the record in the *Anderson* case, that there was a working agreement between Federal and State officers. The Court below, in the instant cases, in spite of the similarity of the facts in both cases concerning illegal arrest by State officers, illegal detention by such officers, violation of State statute as to arraignment, failure to arraign pursuant to Rule 5(a) of Federal Criminal Rules, plus the added factors in the present cases, *viz:*

(1) Federal agents initiated the local police action as to petitioner by a telephone call;

(2) admission by Federal agent that prior to arrest of petitioner a Federal agent and a local detective had been assigned to work out information about the case; and

(3) the call from the local police to the Federal agents that the former had arrested petitioner and was on the way to police headquarters, determined that such facts did not establish a "working agreement" between the agencies. Such a finding resulted from a misunderstanding of the principle in *Anderson, et al. v. United States* (*supra*).

2. The question presented, and the interpretation as to what constitutes a "working agreement" as enunciated in *Anderson, et al. v. United States* is of importance in the administration of criminal justice in the Federal Courts. *McNabb v. United States*, 318 U. S. 332, 340. These cases have been presented to and considered by six (6) appellate court justices. The original panel reversed the judgments of conviction by a vote of 2 to 1. After a second hearing *en banc* before five Judges (two of whom sat on the original panel), the opposite determination, *i.e.* of affirmance, was rendered by a vote of 3 to 2. Four opinions have been released and two of the same have been withdrawn by order of the Court. The eventual result is that of the six Judges who have examined the facts and applicable law of the case, three have determined that the facts measure up to the standards of evidence necessary to establish a "working arrangement" between Federal and State officers; and three Judges have enunciated the opposite view.

It would appear that there was considerable confusion or hesitancy in the mind of the sole dissenting Judge, on the original decision of reversal of the lower Court. The appeals were argued March 9, 1959; the judgment of re-

versal was entered July 20, 1959; the dissent at that time was evidenced by the statement: "I dissent in a separate opinion to be filed later." (Appendix A). Four and one-half months later, December 4, 1959, and on the same day that the lower Court granted an order for a re-hearing *en banc*, the dissenting opinion was filed. It is conceivable that reasons may exist for a delay as to the rendition of an opinion. However, it is probable as well as plausible that the majority opinion of July 20, 1959, evidenced the correct application of the principle of *Anderson, et al. v. United States*, and the four and one-half month period was a necessity in order to justify the reason for the skeleton form of dissent previously recorded.

Again it will be noted that five months and five days elapsed from the argument on the re-hearing *en banc*, December 15, 1959, and the decision of May 20, 1960. Many valid reasons may exist for such delay, but again, one of the most plausible of such reasons may be the difficulty encountered by the three Judges on the *en banc* re-hearing endeavoring to analyze whether the facts of the present cases fell within or without the reasoning of *Anderson, et al. v. United States (supra)*.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM B. MAHONEY,
Counsel for Petitioner.

June 15, 1960.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 43—October Term, 1958.

(Argued March 9, 1959 Decided July 20, 1959.)

Docket No. 25177

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FRANK R. COPPOLA,
Defendant-Appellant,

and

DARIO D'ANTUONO, a/k/a "Danny" D'Antuono,
Defendant.

Before:

WASHINGTON, WATERMAN and MOORE,
Circuit Judges.

Defendant Coppola appeals from his conviction, after a trial by jury, on all three counts of an indictment charging violation of 18 U. S. C. §2113(a) and (b), Western District of New York, Brennan, *J.* Reversed and remanded.

LEO L. FALLON, Asst. U. S. Attorney, W. D. N. Y., Buffalo, N. Y. (John O. Henderson, U. S. Attorney, W. D. N. Y., Buffalo, N. Y., on the brief), *for Plaintiff-Appellee.*

WILLIAM B. MAHONEY, Buffalo, N. Y., *for Defendant-Appellant.*

WATERMAN, *Circuit Judge:*

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York, on all three counts of an indictment charging violations of 18 U. S. C. § 2113(a) and (b). The first count alleged that defendant by force, violence and intimidation, took approximately $52,529.00 from a Buffalo, New York branch of the Manufacturers and Traders Trust Co., said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.00. Defendant's sole contention on this appeal is that admissions by him, oral and written, were improperly allowed into evidence. As a result of those claimed errors, he seeks a new trial.

The facts necessary for a determination of this question follow. On February 15, 1956 the Clinton-Bailey Branch, in Buffalo, New York, of the Manufacturers and Traders Trust Co. was held up and robbed by two masked men. The defendant was a suspect as early as February 20, 1956, five days after the robbery, but no arrest was made. Subsequent to that time the FBI received the aid of a confidant of defendant. As a result of that aid the FBI came to believe that defendant was responsible for an unrelated crime, a robbery of a local butcher; and John A. Roche, Special Agent in Charge of the FBI in Buffalo, communicated that belief to John Golombeck, the City of Buffalo

Chief of Detectives, on January 7, 1957. By means of photographs of defendant supplied by the FBI to the

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city police the butcher identified defendant. On January 9, 1957 Roche again contacted Golombeck and informed him that defendant and two others were planning to rob a tavern in East Buffalo the following day. Roche then communicated the same information to the County District Attorney, and told him that defendant was also a suspect in a bank robbery. About 9:30 A. M. on January 10, 1957 Golombeck with two other Buffalo policemen arrested defendant and two of his companions. Golombeck then telephoned Roche that defendant had been arrested and was being taken to police headquarters. That afternoon when defendant was being interrogated by the County District Attorney, Roche was present. He questioned defendant briefly about his connection with the Manufacturers and Traders Trust Co. robbery. That evening two FBI agents, acting on orders from Roche, went to police headquarters, and there questioned defendant in his cell from 9:00 P. M. until about 12:45 A. M. on January 11. It was during this period that defendant made the incriminating statements involving him in the February 15, 1956 bank hold-up. These statements were then reduced to writing. Thereafter at 11:00 A. M. on January 11, 1957, the FBI requested that defendant be turned over to them. However, the federal officers did not obtain custody of Coppola until about 4:00 P. M. on that day. In the meantime, after the FBI request, at about 2:00 P. M. that day defendant was arraigned in the City Court of Buffalo. This was the first time he had been brought before any magistrate after he had been picked up at mid-morning of the previous day. After he was turned over to the FBI he was promptly ar-

raigned before a United States Commissioner. Although Roche and the local police testified to a spirit of cooperation between their respective law enforcement departments, they denied that defendant was arrested by the police officers at the FBI's request. Defendant made a timely motion

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at the trial to suppress all evidence of his admissions. After a hearing out of the jury's presence the district court denied the motion to suppress. He held that, as a matter of law, there "was no unusual delay" of a nature that should foreclose the introduction of the evidence of the Government concerning the defendant's incriminating statements made to the federal agents while he was held by the Buffalo police.

If federal officers had picked up the defendant and had incarcerated him from approximately 9:30 A. M. on January 10, 1957 until after midnight that night and during that time had interrogated him to the extent of the interrogation here, there would seem to be little doubt that his detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and that defendant's admissions made to the federal agents would have been inadmissible as evidence against him. *Mallory v. United States*, 354 U. S. 449 (1957); *Upshaw v. United States*, 335 U. S. 410 (1948); *McNabb v. United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784 (1943). However, the question before us that we must decide is whether the admissions made here, inasmuch as they were obtained by federal officers while the defendant was in the hands of local police, are also inadmissible.

The leading case on this point is *Anderson v. United States*, 318 U. S. 350 (1943). There, following a dynamit-

ing of steel towers and TVA power lines, the defendants were arrested by the county sheriff and imprisoned without arraignment in violation of the state law. During their periods of illegal detention, which ranged from two to six days, six of the defendants were questioned intermittently by federal officers and finally confessed to the dynamiting. After they had confessed they were arrested by the federal officers and then arraigned before a United States Commissioner. Relying upon *McNabb v. United*

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States, supra, decided the same day, the Supreme Court held that the confessions so obtained were inadmissible at the trials. With respect to the fact that the illegal detentions were by local police, it said:

> "There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers." 318 U. S. at 356.

The Government, on the present appeal, asks us to construe this ambiguous language—*i.e.*, "a working arrangement"—so as to require, in order to prohibit the use in federal courts of confessions obtained by federal officers during an illegal detention by the local police, that the illegal detention be at the instance or at the request of federal officers. Clearly such an interpretation of the phrase "working arrangement" would result in an affirmance of the decision below, for the facts surrounding defendant's arrest do not, in our opinion, require the inference that the *Buffalo police acted upon the request of the FBI*, express-

ed or implied. Both the FBI agents and the Buffalo police denied that any such request was made.

However, we cannot accept the Government's construction. We must follow Supreme Court decisions as we read them, and not attempt redefinition of them. A careful reading of *Anderson* convinces us that the position urged upon us by the Government is a misinterpretation of that decision. The Court was careful to point out there that the *Anderson* arrests were made by the county sheriff "*on his own initiative,*" and that the prisoners were held in the custody of "*the state officers*" *while they were being ques-*

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tioned by the FBI. There is no indication whatever by the Court that the sheriff and his aides were not detaining the prisoners in order to perform their own primary function, that of the investigation of a local crime. The only "working arrangement" spelled out by the facts of that case is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter. It is without significance that the detentions and questioning periods in *Anderson* lasted much longer than here. The Supreme Court has made it clear that *McNabb v. United States* was decided without regard to coercion, psychological or physical, *Upshaw v. United States,* 335 U. S. 410 (1948), and *Anderson* was based on the principles which governed *McNabb.*[1]

The Fifth Circuit has placed a different interpretation upon *Anderson* than we do here, and the Supreme Court

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[1] In *McNabb* the Supreme Court had before it a violation of the congressional requirement that federal prisoners be promptly arraigned after having been apprehended. The Court stated that the purpose of this congressional require-

has declined to review its decisions. *Horne v. United States*, 246 F. 2d 83 (5 Cir. 1957), *cert. denied*, 355 U. S. 878 (1957); *Brown v. United States*, 228 F. 2d 286 (5 Cir. 1955), *cert. denied*, 351 U. S. 986 (1956), *rehearing denied*, 352 U. S. 861 (1956); *White v. United States*, 200 F. 2d 509 (5 Cir. 1952), *cert. denied*, 345 U. S. 999 (1953), *rehearing denied*, 346 U.S. 843 (1953); see *Papworth v. United States*, 256 F. 2d 125 (5 Cir. 1958), *cert. denied*, 358 U. S. 854 (1958), *rehearing denied*, 358 U. S. 914 (1958). However, a denial of a writ of certiorari imports no expression of opinion upon the merits of the decision wherein it is sought. *Elgin, Joliet, and Eastern Ry. Co. v. Gibson*, 355 U. S. 897 (1957); *Brown v. Allen*, 344 U. S. 443 (1953); *rehearing denied*, 345 U. S. 946 (1953); *House v. Mayo*, 324 U. S. 42 (1945), *rehearing denied*, 324 U. S. 886 (1945); *Atlantic Coast Line R. Co. v. Powe*, 283 U. S. 401 (1931); *United States v. Carver*, 260 U. S. 482 (1923); *Graeber v. Rhay*, 256 F. 2d 556 (9 Cir. 1958), *cert. denied*, 358 U. S. 857 (1958). Consequently, we are quite free to disagree with the position taken by that Circuit; and, in the light of the factual setting of *Anderson* we are of the opinion that we are obligated to do so.

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ment was to prevent any possibility that federal officers would engage in the abuses that sometimes accompany "secret interrogations," and the Court then decided that this prevention of abuses was so basic to a true administration of federal justice that federal courts would be derelict in the "duty of courts as agencies of justice and custodians of liberty" if they allowed themselves to countenance introduction into evidence of admissions obtained by federal officers from "secret interrogation of persons accused of crime."

No violation of this *congressional* requirement was involved in *Anderson*. There the illegal detention was solely that of Tennessee officers. However, the Court saw that the basic problem that was present in *McNabb* was equally present in *Anderson*. As in *McNabb* the *Anderson* defendants were interrogated by federal officers while they were being illegally detained without arraignment. To be sure, the failure to promptly arraign was the act of the Tennessee officers who were thereby violating their own Tennessee law, but the interrogation in both cases was by federal officers. The Supreme Court held that it was just as much the duty of a federal court to exclude admissions obtained by federal officers during the *Anderson* "secret interrogation" as it was to exclude admissions obtained by federal officers when the delay in the arraignment, as in *McNabb*, was the act of federal officers.

Just as the "working arrangement" spelled out in *Anderson v. United States* is, in our opinion, present here, the other factor relied upon in that case to invalidate the confessions, an illegal detention under the applicable state law, 318 U. S. 350, 355-56, is present here also. An examination of the New York law convinces us that the detention of defendant without arraignment from approximately 9:30 A. M. in the morning until he confessed late that evening, without any apparent reason (except for the purpose readily inferred), was illegal. *People v. Lovello*, 1 N. Y. 2d 436 (1956); *People v. Snyder*, 297 N. Y. 81 (1947); *People v. Alex*, 265 N. Y. 192 (1934); *People v. Mummiami*, 258 N. Y. 394 (1932); *People v. Trinchillo*, 2 A. D. 2d 146, 153 N. Y. S. 2d 685 (4th Dept. 1956); *People v. Redmond*, 265 App. Div.

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307, 38 N. Y. S. 2d 727 (3d Dept. 1942); *People v. Kelly*, 264 App. Div. 14, 35 N. Y. S. 2d 55 (3d Dept. 1942); *People v. Calebressi*, 233 App. Div. 79, 251 N. Y. S. 603 (3d Dept. 1931). The Government does not argue to the contrary.

The admissions were improperly admitted into evidence, and the defendant is entitled to a new trial.

Reversed and remanded.

MOORE, *Circuit Judge:*

I dissent in a separate opinion to be filed later.

Filed: December 4, 1959

MOORE, Circuit Judge (dissenting):

I dissent.

The decision of the majority, in my opinion, carries th holding of the Supreme Court in *Anderson v. United States*, 318 U. S. 350 (1943), into the controversial state-federal law enforcement territory far beyond the actual limits of that holding. Not only does the result reached conflict with recent decisions in the Fourth, Fifth and Sixth Circuits but it may well have detrimental effects on federal law enforcement. In an effort to assure the individual defendant of his constitutional rights (to guard which the courts must ever be zealous) the courts should not disregard the welfare of the millions of law-abiding citizens who are entitled to federal, state, county and city police protection against crime. This balancing of seemingly opposing interests has been commented upon so many times that its mere mention is trite. But it is not trite to create by judicial decision a needless impasse to obtaining necessary police protection.

Consider for a moment the virtually undisputed facts. Defendant Coppola, suspected upon sufficient grounds by the local Buffalo police of being about to commit a crime (*i.e.* robbery) with others, also suspected, was apprehended by the Buffalo police, for questioning by them, New York State police and by a representative of the Erie County District Attorney. The FBI, having been informed of the arrest and desirous of inquiring concerning various crimes under investigation, were permitted to interrogate defendant at Police Headquarters briefly during the afternoon and more extensively during the late evening of January

10, 1957. At this second interview statements, oral and written, were made to the FBI which, upon the trial from

which this appeal is taken, defendant's counsel sought to exclude. A protracted hearing (the jury not being present) was held by the trial judge, who, upon facts little disputed, concluded that the statements were admissible.

The majority admit that "the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI, expressed or implied." Indeed, "inference" is not required because defendant's counsel expressly conceded "I do not claim that the Buffalo police made an arrest at the behest of the FBI." This concession was again repeated when the question arose as to whether any evidence was necessary to establish this fact. This fact being undisputed, no further evidence was received relating to that issue. There is no evidence that defendant was in any way mistreated or abused. After hearing all of the evidence and observing the witnesses the trial court came to the conclusion that the defendant's admissions to the FBI were admissible. The majority, however, without knowing why the local police held the defendant for investigation without arraignment from the time of his arrest on January 10 to the time he was taken before a local Commissioner on January 11, have not only held that the local police delayed too long in their arraignment proceeding but that any statement taken by the FBI during this State delay rendered defendant's admissions inadmissible in the federal court trial. This conclusion was reached despite the fact that the federal arraignment was made less than two hours after defendant was released from local police detention.

Completely misconstruing, in my opinion, the facts in the *Anderson* case, the majority claim to be bound by a principle which the opinion therein discloses was never declared. The decision in the *Anderson* case was based

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specifically upon a finding upon the particular facts of that case that there was a "working arrangement" between the federal officers and the local sheriff whereby the defendants were arrested and detained by the local police. The majority refer to these words as ambiguous language, overlooking the fact that if the language were ambiguous it should not have a binding effect on this case based on different facts. But the language was not ambiguous. The situation there was analogous to that found in agency cases where the act of the agent is imputed to the principal. In *Anderson* the facts show that the local police were in effect working for and on behalf of the federal authorities. Naturally a detention for such a purpose could well be considered a detention by federal authorities. It was a "working arrangement" for the benefit of the federal government.

In sharp contrast here the arrest was concededly an independent act of the Buffalo police without any request or suggestion by the FBI. On January 7, 1957 the Buffalo Agent-in-Charge of the FBI informed the Chief of Detectives of the Buffalo police that they had received information that a butcher, first name Paul, last name unknown, had been robbed in the night of January 4 by Coppola, D'Antuono and Simmons. The Agent asked if there were such a hold-up on the local police books. The hold-up was confirmed, the butcher being Paul Redlinski. On the basis of photographs made available to the Buffalo police by the FBI, Redlinski identified Coppola as the man who had robbed him on January 4.

On January 9 the FBI advised the police that the same three individuals had planned a further robbery in East Buffalo at 10:00 A. M. on the next day, January 10, possibly the El Chico Tavern on Clinton Street. The FBI Agent told the Buffalo District Attorney that "we felt obligated to furnish him with this information so that

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he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up" (113aa). This, as well as the Redlinski robbery, was only a State offense and thus outside the jurisdiction of the FBI.

Thereupon the Buffalo police without any direction, suggestion, supervision or participation by the FBI made their own plans to safeguard the citizens of Buffalo against a contemplated crime which was wholly within their jurisdiction. Buffalo police were stationed in five different taverns where the suspected hold-up might be and the Detective Chief and two other Buffalo policemen were in an automobile at about 9:30 A. M. or 9:45 A. M. in the vicinity of Clinton and Babcock Streets. No FBI agent accompanied them. Seeing the three persons who were suspected of being about to commit a hold-up in a car in the vicinity of the tavern to be robbed the Buffalo police intercepted it and took the occupants to the Buffalo Police Station.

Reviewing the conduct of both Buffalo police and the FBI at this stage, there is no proof that the FBI for their own purposes or otherwise had any part in the decision or the actions of the Buffalo police in their endeavor to prevent a robbery. The arrest of Coppola and his companions was no part of any FBI scheme to obtain their detention for purposes of FBI investigation. The FBI had

learned of Coppola's alleged participation in the butcher robbery and had also learned of the robbery to be perpetrated the next morning. Surely no one would advocate their remaining silent and not informing the local police. The trial judge commented on the same subject saying: "here is information given—it seems to me entirely properly—it seems to me it would be a failure on the part of the FBI if they didn't make it known to the local authorities that a crime, according to their information, was about

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to be committed. There is no evidence that they gave these local police any instructions; the local police do as they please. They arrested him, what seems to me, regularly. Here was a man that wasn't being held just for investigation for one simple matter; it was quite apparent the Buffalo police wished to interview him with regard to many matters, and investigation went on" (129aa).

That subsequent notice of arrest of Coppola and his confederates was given to the FBI was normal police procedure. In fact it would have been most unnatural had the Buffalo police not done so. Interchange of information between the FBI and local police throughout the country should be encouraged if the public is to have proper safeguards against the commission of crime. This interchange, however, does not create the type of "working arrangement" found to exist in the *Anderson* case. Once the FBI knew of the whereabouts of the persons arrested it was their duty to endeavor to ascertain all possible facts from them concerning crimes which they were investigating. Since the only place this investigation could go forward was in the place where the suspects were to be found, namely, in the local police station, it was necessary to talk to them there. This the FBI did. They had no overriding

federal sovereign power to wrest the defendant from the custody of local police and take him to federal headquarters or to arraign him before a federal commissioner. The courtesies extended to the defendant by the FBI during the interviews and his almost immediate arraignment upon his release by the local police are undisputed. They attest the high degree of constitutional protection accorded by the FBI.

The opinion of the majority seems quite self-contradictory. They say that the purpose of the *Anderson* and *McNabb* cases is "to discourage illegal detentions by overzealous federal police officers" and while they point to no

fact showing any illegal detention by the federal police, from this hypothesis, they continue to say "that the same exclusionary rule [should] be applied when federal officers obtain the cooperation of local police, and through such cooperation the local police do the illegal detaining for the federal agents * * *" Again their statement is based upon a contrary-to-fact assumption because both defendant's counsel's admissions and the other proof show conclusively that the arrest and detention were not done at the behest of the federal agents. It would be hard to believe that the phrase "working arrangement" used by Mr. Justice Frankfurter in the *Anderson* case based upon the facts presented there could possibly have been used were the facts of this case before that court. Yet the majority are squarely holding that the mere permission by local police given to the FBI to interview, in the local police station, a person arrested by the local police upon information furnished by the FBI for a purely State offense is such a "working arrangement" as will preclude the introduction of any admissions thereby obtained in evidence

in the federal court. *Anderson* does not call for this conclusion and, in my opinion, the decision here is a most unwise extension of an already well extended principle.

A careful consideration of the *Anderson*, *McNabb* and *Mallory* cases by the Fourth, Fifth and Sixth Circuits has led them to conclusions diametrically opposed to the conclusion of the majority here. In *Carpenter v. United States*, 4 Cir., 1959, 264 F. 2d 565, 571, the court said:

> "Federal rules and statutes governing the arraignment of persons in federal custody have no application, however, to the arraignment by state officials of state prisoners, unless, of course, the state officials are acting for, and under the direction of, federal agents
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> under circumstances which fairly warrant the conclusion that the custody is federal in substance.
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> * * * * *
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> "The arresting officer was executing no federal warrant. * * * The officer was neither under the control nor the direction of the FBI, and his custody was that of the state, which could not be converted into federal custody merely by reason of the prior receipt of the widely broadcast FBI flyer" (p. 572).

In *Stephenson v. United States*, 6 Cir., 1958, 257 F. 2d 175, the defendant was in the custody of the state. He was not arrested under a federal warrant until some thirteen days later and was immediately taken before a United States Commissioner. The court held that the rulings in *McNabb*, *Anderson* and *Mallory* were not applicable.

In *Papworth v. United States*, 5 Cir., 1958, 256 F. 2d 125, the court conceded that the local police officers had committed acts "which, had the entire matter been within

exclusive federal control, would have tainted any admissions made to the officers with invalidity" (p. 128). However, there the Court of Appeals found that "there is adequate support for the trial court's finding that the arrest was by the state officers without inducement by the FBI agents, and that therefore the detention was state and not federal detention. There was thus no requirement, since there was no opportunity, for the federal agents to take Papworth before the United States Commissioner until the state officers made him available for that purpose. There is no complaint that once actual custody was turned over to the federal agents there was any delay in the arraignment" (p. 128).

To the same effect in the Fifth Circuit are *White v. United States*, 5 Cir., 1952, 200 F. 2d 509, cert. den. 345 U. S. 999, and *Brown and Hogue v. United States*, 5 Cir., 1766g 1955, 228 F. 2d 286. Here there is a concession that the arrest was by state officers without inducement by FBI agents, so that an *a fortiori* situation is presented in support of sustaining the trial court in its answer to the preliminary question of admissibility.

Quite apart from the cases the consequences of the majority decision should be considered. Assume a person at large is wanted by the FBI for serious crimes, such as, bank robbery or murder of government agents. The FBI learns that the suspect has been picked up for a misdemeanor by the local police and is in some local jail. Proper police investigation calls for them to interview the suspect at the earliest possible moment. They seek such an interview and eventually it is granted and valuable statements are made by the suspect. The FBI depart and obtain a warrant. At that point the prisoner is

still solely within the custody of the local authorities. For reasons of their own they choose not to arraign him before a local magistrate for one or two days and only then release him to federal authorities. Another variation of the same hypothesis would be the situation where a prisoner had been detained for some time before any notice of his apprehension was given by local police to the FBI. If the rule laid down by the majority here is to be the law, local or state police officers, by action which the federal authorities would be powerless to prevent, could completely frustrate the prosecution of confessed crimes of first degree magnitude. Such a result would certainly not aid the purpose of the *McNabb* rule, namely, deterrence of illegal detention by federal police officers.

In my opinion the conclusion of the trial judge was reached after carefully searching the facts relative to the oral and written statements made by the defendant and his conclusion that they were admissible as well as the conviction should be affirmed.

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Filed: December 4, 1959.

MOORE, *Circuit Judge* (dissenting opinion):

See dissenting opinion in *United States of America v. Frank R. Coppola*, Docket No. 25177, filed December 4, 1959.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

(Argued March 9, 1959
Original Opinion Filed July 20, 1959.)

(Reargued before the Court *en banc*, December 15, 1959
Decided May 20, 1960.)

Docket No. 25177

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FRANK R. COPPOLA,
Defendant-Appellant,

Before:

LUMBARD, *Chief Judge,*

CLARK, WATERMAN, MOORE and FRIENDLY, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Western District of New York, Stephen W. Brennan, *J.*, after a jury trial in which the defendant was convicted of violating 18 U. S. C. A. Section 2113(a) and (b). Defendant alleges that it was error to receive in evidence admissions made by him to the F. B. I. while he was held in the custody of local police.

Affirmed.

JAMES W. KNAPP, Staff Assistant, Department of Justice, Washington, D. C. (John O. Henderson, United States Attorney, Western District of New York, Buffalo, N. Y., Leo J. Fallon, Special Assistant United States Attorney, Western District of New York, Buffalo, N. Y., on the brief), *for plaintiff-appellee.*

WILLIAM B. MAHONEY, Buffalo, N. Y., *for defendant-appellant.*

MOORE, *Circuit Judge:*

Subseqeunt to the argument and decision of this case by the original panel, the United States petitioned for a rehearing *en banc* as to the defendant, Frank R. Coppola, 28 U. S. C. A. § 46(c). Because of the importance of the question involved, the petition was granted and a second argument was heard by all the active judges of the court.

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York, on all three counts of an indictment charging violations of 18 U. S. C. A. § 2113(a) and (b). The first count alleged that defendant on or about February 15, 1956 by force, violence and intimidation, took approximately $52,529 from a branch of the Manufacturers and Traders Trust Co. in Buffalo, New York, said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.

Coppola's sole contention on this appeal is that admissions made by him, oral and written, were improperly re-

ceived in evidence against him. He claims that these admissions were made during an illegal detention[1] by the Buffalo police acting under a "working agreement" with the F. B. I. and that the admissions should therefore have been excluded under *Anderson v. United States*, 318 U. S. 350 (1943). We do not agree. We conclude upon an analysis of the facts that the trial judge properly found that the F. B. I. in no way caused or contributed to Coppola's detention by the Buffalo police. Consequently, the doctrine of the *Anderson* case is inapplicable and the judgment is affirmed.

To resolve the issues here presented a thorough review of the circumstances under which the admissions were given must be made. On January 4, 1957 the butcher shop of Paul Redlinski, in Buffalo, New York was robbed. The robbery was under investigation by the Buffalo police. On January 7, 1957 the Agent-in-Charge of the F. B. I. in Buffalo, John A. Roche, relayed to John M. Golombeck, Chief of Detectives of the Buffalo police, information that the defendant Coppola and two others, D'Antuono and Simmons, had committed the robbery. Roche furnished Golombeck with photographs of these three individuals. Redlinski identified Coppola. On January 9, 1957 Roche again communicated with Golombeck and informed him that the F. B. I. had information that the same three individuals were contemplating a holdup at 10:00 A.M. the next morning, January 10—probably of the El Chico Tavern on

[1] The government concedes that the delay of several hours by the local police in arraigning Coppola constituted an unlawful detention under New York law. See *People v. Lovello*, 1 N. Y. 2d 436 (1956). In our view, however, whether a detention is illegal under state law has no bearing upon the propriety of receiving admissions in evidence in a federal criminal proceeding.

Had the arrest and subsequent delay in arraignment been occasioned by federal officers, it is most probable that Coppola's detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure. See *McNabb v. United States*, 318 U. S. 332 (1943).

Clinton Street, in East Buffalo. Roche also gave the same information to John Dwyer, District Attorney of Erie County "so that he might take whatever action he desired to protect the citizens of Buffalo and prevent, if possible, another holdup." He also told Dwyer that the F. B. I. had been investigating Coppola in connection with the holdup by two masked men of the Clinton-Bailey branch of the Manufacturers and Traders Trust Company on February 15, 1956, and the robbery of the Linwood Branch of the Liberty Bank of Buffalo on October 2, 1956.

Having received this information, the Buffalo police stationed details from their own force in five different taverns where they suspected the holdup might take place. On the morning of January 10, Golombeck and two other members of the Buffalo police force were in a car in the vicinity of the El Chico Tavern. Observing a car in which Coppola, D'Antuono and Simmons were the occupants, the police officers intercepted them and took them to Buffalo police headquarters. Sometime thereafter, but before noon, Golombeck advised Roche of their apprehension. Roche, Golombeck, Dwyer and Klink (a member of the Buffalo Police Department) had lunch and thereafter, with Dwyer, Roche visited Coppola in police headquarters. Dwyer told Coppola that he was interested in him in connection with a series of crimes and specifically questioned him about the Redlinski robbery. Roche questioned Coppola briefly about the M. & T. robbery, but left to secure a form permitting a search to be made of Coppola's home. Although he had originally stated that he had no objection to a search, when Roche returned with the form, Coppola declined to sign it and no search was made. The afternoon and early evening at police headquarters was taken up largely by various appearances of the three individuals in the "show-up" room and with interrogation by the Buffalo police concerning the

Redlinski robbery, a robbery on East Eagle Street, Buffalo, and a crime in Niagara Falls, all state offenses.

Later that evening, at about 9:00 P.M., after a second "show-up" at police headquarters, agents of the F. B. I. talked to the prisoners about the bank robberies. During the course of these interrogations (commencing at about 9:40 P.M.), the admissions which were received in evidence were made by Coppola. The next day, January 11, before noon, the F. B. I. requested that Coppola be delivered to them so that he could be arraigned on the federal charges. He was not delivered immediately but first arraigned by the Buffalo police, at about 2:00 P.M., before a local magistrate in the City Court of Buffalo. Thereafter he was turned over to the F. B. I. and promptly arraigned before a United States Commissioner.

At the trial Coppola urged that his admissions should be suppressed. A hearing was held by the trial court without the presence of the jury at which members of the Buffalo police force and the F. B. I. testified. The court concluded that the statements were not obtained by means of coercion or unlawful collaboration between local and federal officials and denied the motion to exclude the evidence.

In *Anderson v. United States, supra,* the Supreme Court held that admissions made to F. B. I. agents during a detention by state officers, who were acting at the behest and upon the instructions of the federal officials, were inadmissible because the detention was under circumstances unlawful under the rule of *McNabb v. United States, supra,* later codified by Rule 5(a) of the Federal Rules of Criminal Procedure. In that case property owned by the Tennessee Valley Authority, a corporation in which the United States is a stockholder, had been damaged by dynamiting—a violation of the Federal Criminal Code. F. B. I. agents were called in to investigate. Various suspects were taken into custody by the local sheriff and detained in a building. The

questioning, however, with relation to the federal crime was carried on by federal officers over a period of days. No state criminal charges were preferred during the period of detention or at any time thereafter against the defendants. There is no indication that the state officers participated in the interrogation or were endeavoring to solve any state crime. Upon the facts it was quite apparent that the state detention was solely to enable federal officers to pursue their investigation and that the federal agents were responsible for the long delay in arraignment. Hence, the Supreme Court concluded that there existed a "working arrangement" between the federal officers and the local sheriff and that the sheriff was in effect acting as an agent for the F. B. I.

Coppola urges that the facts surrounding his detention fall within the scope of the *Anderson* decision. We do not agree. The differences in the facts are significant. Here Coppola and his two companions were arrested by the Buffalo police on their own initiative because of information that they had committed and were about to commit a crime or crimes in violation of state law. The arrangements to intercept and detain the three men on the morning of January 10 were exclusively planned and executed by the Buffalo police without any suggestion or participation by the F. B. I. In fact Coppola's counsel specifically stated that "I do not claim that the Buffalo police made an arrest at the behest of the F. B. I." The arrest and detention were not to aid or abet the F. B. I. in their investigation or for the purpose of enabling them to interrogate the persons apprehended about federal matters while in state custody. The apprehension and the detention were for questioning about the Redlinski robbery and other local robberies exclusively within the jurisdiction of the Buffalo police. At police headquarters after the arrest, the Buffalo police questioned Coppola and his companions con-

cerning the state offenses. The record shows that the state concentrated on its own business first. These investigations and the necessary appearances in the local "show-ups" occupied most of the day. Coppola could not have been arraigned after 5:00 P. M. on January 10, 1957 in the Buffalo City Court.* The next time he could have been arraigned was the following morning so that F. B. I. interrogation that evening did not contribute to any delay in arraignment. When questioned by the F. B. I. agents, Coppola was fully advised that he did not have to make a statement, that any statement could be used against him, and that he was entitled to advice of counsel. However, he indicated a willingness to talk and dictated a statement which was taken down in handwritten form, read over by him and then signed. Coppola had had grammar school and junior high school education as well as an accounting course for approximately a year at a business college. He was able to read and understand that which he signed. There is no evidence of any coercion, mistreatment or abuse. There is no claim made that there was any delay in arraignment by the F. B. I. or that any admissions were made during the period between his release by the local authorities and his arraignment before a United States Commissioner.

The cases other than *Anderson v. United States, supra*, cited by Coppola's counsel involved fact situations wholly different from that of the case before us. In *Byars v. United States*, 273 U. S. 28 (1926), a federal officer accompanied state officers on an illegal search and seizure. There upon the facts the court held that the illegal search "was a joint operation of the local and federal officers" and that "the effect is the same as though [the federal officer] had en-

* Both counsel agreed to this fact upon the oral argument on December 15, 1959.

gaged in the undertaking as one exclusively his own." *Id.* at 33.

In *Gambino v. United States*, 274 U. S. 310 (1927), state officers conducted an illegal search and seizure looking for intoxicating liquor in the days of the National Prohibition Act. The court held that the action of the state troopers in endeavoring to enforce the Act was such that it could be said that the illegal search was "solely for the purpose of aiding in the federal prosecution." *Id.* at 315.

McNabb v. United States, supra, involving as it does an arrest and detention solely by federal officers without participation by local officials, is also not controlling upon us in this case.

In complete contrast with the cases upon which appellant relies, there is in this record no basis for the conclusion that the apprehension and continued detention of Coppola and his two companions was at the behest of federal officers or for the purpose of aiding any investigation they wished to conduct. That the Buffalo police notified the F. B. I. of the defendants' apprehension would be normal police procedure. Only by such an interchange of information can society be adequately protected against crime. The custody of the defendants after arrest was exclusively that of the Buffalo police, as was their interrogation. However, once the F. B. I. knew of the defendants' arrest, it was their duty to endeavor to ascertain all the available facts about the federal crimes which they were investigating. To do this the F. B. I. agents were obliged to conduct their interrogation in the local police station and of course to obtain consent of the local police. That the apprehension and detention were exclusively for state crimes is reflected by the fact that, except for the brief conversation in the afternoon when permission was sought to search Coppola's home, not until well along in the evening was any opportunity given to the

F. B. I. to question the defendants concerning the matters in which the federal officers were interested.

Appellant argues that from February 15, 1956, the date of the M. & T. bank robbery, until defendants' arrest on January 10, 1957, the Buffalo police and the F. B. I. collaborated in trying to solve the crime, and from this fact would draw the conclusion that there must have been a "working arrangement" between them. Mere words however, such as exchange of information, cooperation, collaboration, or even "working arrangement" do not carry within themselves any solution to the difficult problems of federal-state relations here involved. If this cooperation reached the point of arrest and detention by local police for the purpose of enabling federal officers to question the defendants concerning the bank robberies for a period of time forbidden to federal officers by Rule 5(a) of the Federal Rules of Criminal Procedure, admissions thus obtained would properly be excluded. Such a rule prevents federal officers from evading the letter and the spirit of Rule 5(a). The rule excludes confessions when the "working arrangement" includes the illegal detention—in other words, when federal law enforcement officers induce state officers to hold the defendant illegally so that they may secure a confession. However, to bring a case within this rule there must be facts, as there were in *Anderson*, not mere suspicion or conjecture. Here, as in *Abel v. United States*, 258 F. 2d 485, 494 (2d Cir. 1958), *aff'd*, 362 U. S. 217, 226-230 (1960), rehearing denied, May 16, 1960, there is no basis on which this court can properly reverse the conclusion of the district judge. The Supreme Court's decision in that case makes plain that the mere fact that two or more agencies have the same crime or the same suspects on their books and that they are cooperating to achieve a solution does not make one the agent of the other and thus responsible for the other's acts.

If there is to be effective law enforcement, it is to be expected that every police agency, be it state, county, city or federal, will cooperate and exchange information. Probably the F. B. I. and local police have in countless cases the same crimes and the same suspects on their books. Undoubtedly after the Liberty Bank robbery in the present case, both state and federal agencies had the crime under investigation. However, there is no evidence that the F. B. I. had any knowledge whatsoever of the action the Buffalo police might take as a matter of local law enforcement. Nor is there any reason why the local officials should have discussed their proposed action with the F. B. I. In the absence of any evidence of collaboration to achieve an unlawful end, we would not be warranted in creating a rule whereby prior cooperation of state and federal officials in the investigation of crime would prohibit the admission of uncoerced confessions made during a detention by state officers which the Federal officials did not induce and were powerless to prevent.[2]

CLARK, *Circuit Judge:*

I dissent. I concur in Judge Waterman's dissenting opinion.

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[2] Recent decisions of other circuits in cases involving facts similar to those here have rejected attacks upon the admissibility of evidence obtained by federal agents during a state detention on the ground that the relationship between the local and federal authorities was not comparable to the "working arrangement" described in *Anderson v. United States, supra.* See *White v. United States,* 5 Cir., 1952, 200 F. 2d 509; also *Carpenter v. United States,* 264 F. 2d 565 (4th Cir.), cert. denied, 360 U. S. 936 (1959); *Stephenson v. United States,* 257 F. 2d 175 (6th Cir. 1958); *Papworth v. United States,* 256 F. 2d 125 (5th Cir. 1958), cert. denied, 358 U. S. 854.

WATERMAN, *Circuit Judge* (dissenting):

I dissent.

There are two separate appeals before the court sitting *in banc*. The first appeal is from Coppola's conviction upon the indictment arising out of the robbery of the Manufacturers and Traders Trust Company on February 15, 1956. The second is from his conviction on three counts of aiding, abetting, and counseling four defendants who robbed the Liberty Bank of Buffalo, Linwood Branch, on October 2, 1956. The indictments in both cases were filed on February 4, 1957. The Manufacturers and Traders Trust Company case in which Coppola was charged with physically participating in the actual robbery was tried in July 1957, before Judge Brennan of the northern District of New York, sitting in the Western District by designation, and a jury. Coppola was sentenced to 20 years. The second case in which Coppola was charged with having aided, abetted and counseled those who entered the bank though he did not actually participate physically in the holdup was tried in November 1957 before Judge Morgan and a jury. Coppola was sentenced to another 20 years to be served consecutively to the 20 years imposed upon him by Judge Brennan. Coppola did not testify before the jury in either case.

The indictments were filed after Coppola had been apprehended by Buffalo police officers in the forenoon of January 10, 1957 and after he had been interrogated that evening and in the early hours of January 11, 1957 by agents of the Federal Bureau of Investigation. Incriminating admissions concerning his implication in the two bank robberies were made by Coppola to the agents at that time. The Government at trial sought to introduce these admissions into evidence, and the attorney for Coppola requested and received a hearing outside the presence

of the jury for the purpose of having these admissions suppressed. Judge Brennan in the first case, and Judge Morgan in the second, refused to suppress, and each judge ruled that the statements were admissible in evidence. From these rulings defendant appealed.

The appeals were heard at the same time by a panel of this court composed of Judge Washington of the Court of Appeals for the District of Columbia Circuit, sitting with us by designation at our request, and Judges Waterman and Moore. Argument was had on March 9, 1959, and the majority opinion of a divided court was filed July 20, 1959. The Government petitioned for a rehearing *in banc* which was granted.

The Government maintained in its rehearing petition that the panel majority had misapplied the rule expressed by the Supreme Court in *Anderson v. United States*, 318 U. S. 350 (1943) to the facts of the apprehension, detention, and interrogation of Coppola; and that a proper application of the rule to the facts would have required affirmances instead of reversals of the trial rulings. The *in banc* majority finds that the Government's contention has merit. I disagree. The *in banc* majority's efforts to sustain the different result they reach here from the result the Supreme Court reached in *Anderson* by attempting meaningfully to distinguish the facts in the two cases appears to me to have been a failure.

The passage of time, the reargument before the *in banc* court, and the *in banc* majority opinion have only served to reinforce my belief in the validity of my July 20, 1959 opinion, the opinion in which Judge Washington joined. Therefore, I insert as part of this dissent that entire opinion, and, after quoting it, I will comment upon the content of the majority opinion from which I am now dissenting.

The Opinion of the Panel Majority in Docket No. 25177[1]

[Found at pp. 1760-1766 of Second Circuit printed opinions October Term, 1958]

No. 43—October Term, 1958.

(Argued March 9, 1959 Decided July 20, 1959.)

Docket No. 25177

The United States of America, —
Plaintiff-Appellee,

v.

Frank R. Coppola,
Defendant-Appellant,

and

Dario D'Antuono, a/k/a "Danny" D'Antuono,
Defendant.

Before:

Washington, Waterman, and Moore,
Circuit Judges.

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[1] The majority opinion of the panel in the second case, No. 25257, relating to the Liberty Bank holdup, insofar as it related to Copolla's appeal, referred to the opinion in Docket No. 25177, and its disposition was governed by the same considerations. All that I said there that has any bearing on the matters now before us is found at pages 1768-1769 of the October Term, 1958 slip sheet reports of our court, and reads as follows:

"Defendant Coppola

"During the course of the trial a member of the FBI, Gordon Eddy, was produced as a witness by the Government. He sought to give testimony relative to an oral confession made to him by Coppola. The latter moved to have this evidence suppressed, but after a hearing conducted out of the presence of the jury the dis-

WATERMAN, *Circuit Judge:*

The defendant, Frank R. Coppola, was convicted, after a trial by jury in the Western District of New York on all three counts of an indictment charging violations of 18 U. S. C. §2113(a) and (b). The first count alleged that defendant by force, violence and intimidation, took approximately $52,529.00 from a Buffalo, New York branch of the Manufacturers and Traders Trust Co., said company being a member of the Federal Reserve System; the second count charged defendant with entering that bank with intent to commit larceny; and the third count charged him with taking and carrying away from that bank, with intent to steal, the sum of approximately $52,529.00. Defendant's sole contention on this appeal is that admissions by him, oral and written, were improperly allowed into evidence. As a result of those claimed errors, he seeks a new trial.

The facts necessary for a determination of this question follow. On February 15, 1956 the Clinton-Bailey Branch, in Buffalo, New York, of the Manufacturers and Traders Trust Co. was held up and robbed by two masked men. The defendant was a suspect as early as February 20, 1956, five days after the robbery, but no arrest was made. Subsequent to that time the FBI received the aid of a confidant of defendant. As a result of that aid the FBI came to believe that defendant was responsible for an unrelated

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trict court permitted the testimony. As was proper, however, it carefully instructed the jury that Eddy's testimony relative to Coppola's oral confession was not to be considered binding upon Simmons or upon Millio.

"The evidence produced at that hearing reveals that the oral admissions testified to by Agent Eddy were made at the same time and under the same circumstances as those described in United States v. Frank R. Coppola, ——— F. 2d ——— (2 Cir. 1959), decided this day. Therefore, for the reasons given in that decision, we hold that the testimony was improperly allowed against Coppola and that he is entitled to a new trial."

crime, a robbery of a local butcher; and John A. Roche, Special Agent in Charge of the FBI in Buffalo, communicated that belief to John Golombeck, the City of Buffalo Chief of Detectives, on January 7, 1957. By means of photographs of defendant supplied by the FBI to the city

[1760]

police the butcher identified defendant. On January 9, 1957 Roche again contacted Golombeck and informed him that defendant and two others were planning to rob a tavern in East Buffalo the following day. Roche then communicated the same information to the County District Attorney, and told him that defendant was also a suspect in a bank robbery. About 9:30 A. M. on January 10, 1957 Golombeck with two other Buffalo policemen arrested defendant and two of his companions. Golombeck then telephoned Roche that defendant had been arrested and was being taken to police headquarters. That afternoon when defendant was being interrogated by the County District Attorney, Roche was present. He questioned defendant briefly about his connection with the Manufacturers and Traders Trust Co. robbery. That evening two FBI agents, acting on orders from Roche, went to police headquarters, and there questioned defendant in his cell from 9:00 P. M. until about 12:45 A. M. on January 11. It was during this period that defendant made the incriminating statements involving him in the February 15, 1956 bank hold-up. These statements were then reduced to writing. Thereafter, at 11:00 A. M. on January 11, 1957, the FBI requested that defendant be turned over to them. However, the federal officers did not obtain custody of Coppola until about 4:00 P. M. on that day. In the meantime, after the FBI request, at about 2:00 P. M. that day defendant was arraigned in the City Court of Buffalo. This was the first time he had been brought before any magistrate after he had

been picked up at mid-morning of the previous day. After he was turned over to the FBI he was promptly arraigned before a United States Commissioner. Although Roche and the local police testified to a spirit of cooperation between their respective law enforcement departments, they denied that defendant was arrested by the police officers at the FBI's request. Defendant made a timely motion at the [1761] trial to suppress all evidence of his admissions. After a hearing out of the jury's presence the district court denied the motion to suppress. He held that, as a matter of law, there "was no unusual delay" of a nature that should foreclose the introduction of the evidence of the Government concerning the defendant's incriminating statements made to the federal agents while he was held by the Buffalo police.

If federal officers had picked up the defendant and had incarcerated him from approximately 9:30 A. M. on January 10, 1957 until after midnight that night and during that time had interrogated him to the extent of the interrogation here, there would seem to be little doubt that his detention would have been in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and that defendant's admissions made to the federal agents would have been inadmissible as evidence against him. *Mallory v. United States*, 354 U. S. 449 (1957); *Upshaw v. United States*, 335 U. S. 410 (1948); *McNabb v. United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784 (1943). However, the question before us that we must decide is whether the admissions made here, inasmuch as they were obtained by federal officers while the defendant was in the hands of local police, are also inadmissible.

The leading case on this point is *Anderson v. United States*, 318 U. S. 350 (1943). There, following a dynamit-

ing of steel towers and TVA power lines, the defendants were arrested by the county sheriff and imprisoned without arraignment in violation of the state law. During their periods of illegal detention, which ranged from two to six days, six of the defendants were questioned intermittently by federal officers and finally confessed to the dynamiting. After they had confessed they were arrested by the federal officers and then arraigned before a United States Commissioner. Relying upon *McNabb v. United*

[1762]

States, supra, decided the same day, the Supreme Court held that the confessions so obtained were inadmissible at the trials. With respect to the fact that the illegal detentions were by local police, it said:

> "There was a working arraignment between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers." 318 U. S. at 356.

The Government, on the present appeal, asks us to construe this ambiguous language—i.e., " a working arrangement"—so as to require, in order to prohibit the use in federal courts of confessions obtained by federal officers during an illegal detention by the local police, that the illegal detention be at the instance or at the request of federal officers. Clearly such an interpretation of the phrase "working arrangement" would result in an affirmance of the decision below, for the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI.

expressed or implied. Both the FBI agents and the Buffalo police denied that any such request was made.

However, we cannot accept the Government's construction. We must follow Supreme Court decisions as we read them, and not attempt redefinition of them. A careful reading of *Anderson* convinces us that the position urged upon us by the Government is a misinterpretation of that decision. The Court was careful to point out there that the *Anderson* arrests were made by the county sheriff "on his own initiative," and that the prisoners were held in the custody of "the state officers" while they were being ques-

[1763]

tioned by the FBI. There is no indication whatever by the Court that the sheriff and his aides were not detaining the prisoners in order to perform their own primary function, that of the investigation of a local crime. The only "working arrangement" spelled out by the facts of that case is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter. It is without significance that the detentions and questioning periods in *Anderson* lasted much longer than here. The Supreme Court has made it clear that *McNabb v. United States* was decided without regard to coercion, psychological or physical, *Upshaw v. United States*, 335 U. S. 410 (1948), and *Anderson* was based on the principles which governed *McNabb*.[1]

[1] In *McNabb* the Supreme Court had before it a violation of the congressional requirement that federal prisoners be promptly arraigned after having been apprehended. The Court stated that the purpose of this congressional requirement was to prevent any possibility that federal officers would engage in the abuses that sometimes accompany "secret interrogations," and the Court then decided that this prevention of abuses was so basic to a true administration of federal justice that federal courts would be derelict in the "duty of courts as agencies of justice and custodians of liberty" if they allowed themselves to counte-

The Fifth Circuit has placed a different interpretation upon *Anderson* than we do here, and the Supreme Court [1764] has declined to review its decisions. *Horne v. United States*, 246 F. 2d 83 (5 Cir. 1957), *cert. denied*, 355 U. S. 878 (1957); *Brown v. United States*, 228 F. 2d 286 (5 Cir. 1955), *cert. denied*, 351 U. S. 986 (1956), *rehearing denied*, 352 U. S. 861 (1956); *White v. United States*, 200 F. 2d 509 (5 Cir. 1952), *cert. denied*, 345 U. S. 999 (1953); *rehearing denied*, 346 U. S. 843 (1953); see *Papworth v. United States*, 256 F. 2d 125 (5 Cir. 1958), *cert. denied*, 358 U. S. 854 (1958) *rehearing denied*, 358 U. S. 914 (1958). However, a denial of a writ of certiorari imports no expression of opinion upon the merits of the decision wherein it is sought. *Elgin, Joliet, and Eastern Ry. Co. v. Gibson*, 355 U. S. 897 (1957); *Brown v. Allen*, 344 U. S. 443 (1953); *rehearing denied*, 345 U. S. 946 (1953); *House v. Mayo*, 324 U. S. 42 (1945), *rehearing denied*, 324 U. S. 886 (1945); *Atlantic Coast Line R. Co. v. Powe*, 283 U. S. 401 (1931); *United States v. Carver*, 260 U. S. 482 (1923); *Graeber v. Rhay*, 256 F. 2d 556 (9 Cir. 1958), *cert. denied*, 358 U. S. 857

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nance introduction into evidence of admissions obtained by federal officers from "secret interrogation of persons accused of crime."

No violation of this *congressional* requirement was involved in *Anderson*. There the illegal detention was solely that of Tennessee officers. However, the Court saw that the basic problem that was present in *McNabb* was equally present in *Anderson*. As in *McNabb* the *Anderson* defendants were interrogated by federal officers while they were being illegally detained without arraignment. To be sure, the failure to promptly arraign was the act of the Tennessee officers who were thereby violating their own Tennessee law, but the interrogation in both cases was by federal officers. The Supreme Court held that it was just as much the duty of a federal court to exclude admissions obtained by federal officers during the *Anderson* "secret interrogation" as it was to exclude admissions obtained by federal officers when they delay in the arraignment, as in *McNabb*, was the act of federal officers.

(1958). Consequently, we are quite free to disagree with the position taken by that Circuit; and, in the light of the factual setting of *Anderson*, we are of the opinion that we are obliged to do so.

Just as the "working arrangement" spelled out in *Anderson v. United States* is, in our opinion, present here, the other factor relied upon in that case to invalidate the confessions, an illegal detention under the applicable state law, 318 U. S. 350, 355-56, is present here also. An examination of the New York law convinces us that the detention of defendant without arraignment from approximately 9:30 A. M. in the morning until he confessed late that evening, without any apparent reason (except for the purpose readily inferred), was illegal. *People v. Lovello*, 1 N. Y. 2d 436 (1956); *People v. Snyder*, 297 N. Y. 81 (1947); *People v. Alex*, 265 N. Y. 192 (1934); *People v. Mummiami*, 258 N. Y. 394 (1932); *People v. Trinchillo*, 2 A. D. 2d 146, 153 N. Y. S. 2d 685 (4th Dept. 1956); *People v. Redmond*,

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265 App. Div. 307, 38 N. Y. S. 2d 727 (3d Dept. 1942); *People v. Kelly*, 264 App. Div. 14, 35 N. Y. S. 2d 55 (3d Dept. 1942); *People v. Calebressi*, 233 App. Div. 79, 251 N. Y. S. 603 (3d Dept. 1931). The Government does not argue to the contrary.

The admissions were improperly admitted into evidence, and the defendant is entitled to a new trial.

Reversed and remanded.

[1766]

Comments Upon Present Majority Opinion

I

I believe that the efforts in the present majority opinion to distinguish the factual situation presently before us from that in *Anderson v. United States*, 318 U. S. 350 (1943) have been unsuccessful. An examination of the statement of facts in the *Anderson* case, *supra*, at pp. 352-55, will reveal that there a state crime clearly was involved—the wilful destruction of power lines, see footnote 2 at p. 352. A state officer, the sheriff, acting "on his own initiative," took into his custody persons, including the eight *Anderson* petitioners, whom he personally suspected of participating in the dynamiting of the power lines. Moreover, to suggest (as the majority opinion appears to suggest) that the sheriff or any of his deputies, or any other state officer, subsequent to the state arrests, did not interrogate persons they themselves arrested is to indulge in a surmise entirely unwarranted by anything that appears in the Supreme Court's opinion.[2] Finally, at the time of the arrests, detentions, and interrogations in *Anderson* in April 1940 there was no reason, as federal agents may believe there is now, for the federal agents to enlist state connivance in effecting the apprehension and detention of suspects. *McNabb v. United States*, 318 U. S. 332 (1943), *rehearing denied*, 319 U. S. 784, had not been decided then, and the federal agents could well have believed that the confessions obtained from the *Anderson* defendants would have been admissible in a federal court as proof of federal crimes even if the apprehension and detention of the confessing prisoners had been

[2] Indeed, the opinion of the Court of Appeals in the *Anderson* case, 124 F. 2d 58, 67 (6 Cir. 1941) strongly suggests that the defendants *were* interrogated by the sheriff and his deputies subsequent to arrest.

exclusively that of federal officers. Thus I believe that the majority here has entirely misread the *Anderson* case when they conclude that upon its facts "it was quite apparent that the state detention was solely to enable federal officers to pursue their investigation * * *".

Even had the facts in *Anderson* been as the majority here wishes them to have been, the rule of law which the majority here announce is incompatible with the theory upon which *Anderson* was decided. My colleagues appear to hold that, under *Anderson*, a confession to federal officers, prior to any arraignment, made by a prisoner detained in state custody, need not be excluded from evidence in a federal court unless the state arrest was made at the request of federal officers or unless the federal officers participated in determining the length of time the prisoner was to be detained prior to any arraignment, state or federal.[8]

[8] The present *in banc* majority opinion appears to suggest that the rule set forth by the panel majority in the July 20, 1959 opinion hinged upon the fact that the state and federal officers had cooperated in the prior investigation of the crimes to which Coppola confessed while in state detention. A closer reading of the opinion of the panel majority will reveal that this is incorrect. We stated: "The only 'working arrangement' spelled out by the facts of that case [Anderson] is the one we have here—such cooperation between federal and local police as permitted the former to interrogate the latter's prisoners during their detention by the latter." (P. 1764.) The panel majority would have reached its result even if the federal-state cooperation in the earlier investigation of the crime had been absent. However, under the rule of law which I understand the *in banc* majority of this court here to announce, and assuming, *arguendo*, the validity of this rule of law, the fact of federal-state cooperation in the prior investigation of the crime has evidentiary significance and militates against the conclusion which the majority reach. If federal and state authorities have worked closely together in the investigation of a case there surely is likelihood that this cooperation continued in determining (1) whether a suspect is to be apprehended at all, (2) by which law enforcement agency the apprehension is to be made, and (3) how long the suspect is to be detained by the apprehending agency prior to arraignment. See discussion under part II, *infra*.

Anderson was based upon the Supreme Court's decision in *McNabb v. United States, supra*, and its determination was governed by the same considerations. In *McNabb* it was held that a confession secured in a two-day interval between arrest and arraignment could not be admitted in a federal criminal proceeding. The requirement of prompt arraignment is intended to protect a prisoner from intensive interrogation prior to the time a magistrate can determine whether there is any probable cause for detention and can inform the prisoner of his right to counsel and his right to remain silent. *Mallory v. United States*, 354 U. S. 449, 453-54 (1957). A federal defendant has been equally deprived of this protection whether his confession, exacted during detention prior to an arraignment, is made to a federal agent in a city, state or federal jail, or in a Tennessee Y. M. C. A.

II.

But even accepting, *arguendo*, the majority's improbable interpretation of *Anderson v. United States, supra*, I doubt that Coppola's confession was properly admitted. Contrary to what one might conclude from the statement of facts found in the majority opinion, I find many indications in the records of these two cases that Coppola's arrest by state officials would never have occurred on January 10 but for the insistence of the agent in charge of the FBI in Buffalo, and further indications that the manner of Coppola's detention on that day and night was designed, at least in part, to satisfy the desires of the FBI. In reaching this conclusion one needs to consider only the testimony of FBI agents and of officials of the Buffalo Police Department.[4]

[4] The record references cited hereafter are to the record in Docket No. 25177, the case dealing with the Manufacturers and Traders holdup.

Robbery of a bank that is a member of the Federal Reserve System is both a federal and a state crime. The robbery of the Manufacturers and Traders Trust occurred on February 15, 1956 and in the ensuing eleven months the FBI and the Buffalo police worked closely together in investigating it (R. 562-63). On January 4, 1957 the butcher shop of one Paul Redlinsky was robbed. On January 7, John Roche, agent in charge of the FBI's Buffalo office, telephoned John Golombeck, Chief of Detectives of the Buffalo Police Department, and informed Golombeck that the FBI had information that on January 4 Coppola and two others had robbed a butcher shop, proprietor unknown save for the first name "Paul" (R. 554). The Buffalo police then contacted Redlinsky. On January 8th from photographs supplied by the FBI Redlinsky identified Coppola as one of the participants in the robbery. There is no indication that any attempt was then made by the Buffalo police to arrest Coppola. On January 9th Roche personally went to Golombeck's office and informed Golombeck that the FBI possessed information that the three Redlinsky suspects intended to rob a tavern in East Buffalo on the following morning (R. 555). Immediately after this interview with Golombeck, Roche contacted John Dwyer, the District Attorney for Erie County, imparted the same information to him, and stated that Dwyer "* * * might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another holdup" (R. 556). Roche at that time also informed Dwyer that Coppola was suspected by the FBI in connection with the Manufacturers and Traders Trust Co. robbery of Feb. 15, 1956 and the later Liberty Bank robbery of October 2, 1956 (R. 556). From Roche's activities on the 9th it is a fair inference that the FBI desired that Coppola be taken into custody for he was an FBI suspect, but that the custody be not a federal one.

It is also a fair inference that this desire was so strong that both the Chief of Detectives of the City of Buffalo police and the Erie County District Attorney were independently informed of the impending holdup attempt. Since both Dwyer and Golombeck had been informed that Coppola was a suspect in the Manufacturers and Traders and Liberty Bank holdups, and since Coppola was indeed later interrogated by the FBI after his apprehension, one may conclude that the FBI agent-in-charge informed the state and city authorities at this very time that the FBI desired to interrogate Coppola once he had been taken into custody.

Further, the events occurring on the next day, January 10th, confirm the inference that the FBI's role in Coppola's arrest and detention was a more active role than one would surmise it to have been from the majority opinion. Between 9:30 and 9:45 A.M. Coppola and the two other suspects in the Redlinsky robbery were apprehended without warrant while driving in an automobile (R. 505). The apprehending officers were Golombeck and Harry Klenk, head of the homicide squad of the Buffalo Police Department, who seems to have participated in the arrest at Dwyer's instruction (R. 514b, 526). A subordinate police officer happened also to be present in the police vehicle (R. 535). Coppola and his companions were searched, as was their automobile, but nothing incriminating was found either in the car or on their persons (R. 530). The three were taken to Buffalo Police Headquarters, arriving at approximately 11:00 A.M. (R. 509). But shortly *before* they arrived Golombeck telephoned Roche informing him that the arrest had been made (R. 555, 563).[5] Upon arrival at headquarters,

[5] I believe that the issue of *when* the apprehending officers telephoned Roche to notify him of Coppola's arrest is of great importance. Surely if the apprehending state officers took the time to telephone the FBI agent-in-charge prior to the time these officers arrived at Police Headquarters, it is erroneous to state, as does the *in banc* majority, "The record shows that the state concentrated on its own business first."

contrary to the normal procedure whereby each prisoner upon arrival is taken to the detective bureau on the third floor for "booking," Coppola was taken directly to the cell block on the fourth floor (R. 527-29). The asserted justification for this departure from routine was the presence of newspaper photographers and television cameramen not merely on the first floor where one might reasonably expect them to be, but also upstairs on the third floor, where the detective bureau was located (R. 527-28, 536-37). After receiving Golombeck's call, Roche went to police headquarters, arriving there shortly before noon (R. 564). He was told that Coppola and his two associates had not been interrogated (R. 565). Thereupon Roche left the building to have lunch with Golombeck, Klenk, and Dwyer, their luncheon lasting until approximately 2:30 P.M. (R. 565). With Roche remaining at police headquarters (R. 565), Klenk interrogated Coppola for approximately one hour (R. 519-20). In the course of this interrogation Klenk obtained verbal permission to search Coppola's home. At approximately 3:30 P.M. Dwyer and Roche commenced a joint interrogation of Coppola. After Dwyer questioned Coppola concerning the Redlinsky robbery, Roche asked some questions concerning the Manufacturers and Traders robbery and then sought to obtain written permission to search Coppola's home (R. 557-58). Permission was re-

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Golombeck testified that he did not recall the time of this telephone call (R. 536). On direct examination Roche testified unequivocally to the following:

> "Q. What is the next contact you had with the local authorities in regard to this matter? A. On the morning of January 10th at about 11:00 o'clock or shortly thereafter Chief Golombeck called me and told me they had arrested Coppola, D'Antuono and Simmons in the vicinity of the El Chico and that they were then on their way to police headquarters with them." (R. 555.)

Roche repeated this unequivocal testimony on cross examination by Coppola's counsel. (R. 563-64.) I conclude that the telephone call occurred prior to the arrival at police headquarters.

fused, and the interrogation ended soon afterward. It was only thereafter, at approximately 3:45, that Coppola was taken down to the third floor to be booked (R. 518). And it was not until the morning of January 11 after Coppola had confessed during the night-time to the FBI agents that it officially appeared that Coppola was held by the City Police on something other than "suspicion."

From the facts recited above, I am left with the distinct impression that even as Roche was unwilling to leave the question of Coppola's arrest to the sole discretion of the Buffalo Chief of Detectives, so too he was unwilling to trust that officer to determine the course of Coppola's detention and interrogation after the arrest. I suggest that the arresting officers were instructed not to commence questioning Coppola nor even to book him until after the FBI's desires could be ascertained. I suggest further that the course of the afternoon's interrogation was determined at the meeting of Golombeck, Klenk, Dwyer and Roche at lunch, and that Roche had an important part in decisions there reached.

Thus I conclude that the FBI had a far greater role in Coppola's arrest and detention than the majority of this court is willing to state; and that the apprehension of Coppola without warrant in the morning and his detention without being booked until it was too late to arraign him that day, a conceded violation of New York State law, both demonstrate that the Federal and State officers worked out an arrangement between them so that the protection accorded federal suspects under *McNabb v. United States, supra*, could be circumvented.

Lastly, the majority would make much of the statement of Coppola's counsel made before the judge in one but not

in both of the cases which they would construe as a concession against the interest of Coppola: "I do not claim that the Buffalo police made an arrest at the behest of the

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FBI." The statement is taken out of context and was made in the heat of trial, but even standing alone it is valueless as a concession. The word "behest" is synonymous with *order* or *command* or *mandate*, and hence this purported concession still leaves untouched appellant's contention that his state apprehension and subsequent detention were at the *suggestion* and *request* of a federal officer.

I would reverse the convictions below and remand the cases for new trials.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

(Argued March 9, 1959
Original Opinion Filed July 20, 1959.)

(Reargued before the Court *en banc*, December 15, 1959
Decided May 20, 1960.)

Docket No. 25257

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FRANK R. COPPOLA,
Defendant-Appellant.

Before:

LUMBARD, *Chief Judge,*

CLARK, WATERMAN, MOORE and FRIENDLY, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Western District of New York, Justin C. Morgan, *J.*, after a jury trial in which the defendant was convicted of violating 18 U. S. C. A. Section 2113(a) nd (b).

Affirmed.

JAMES W. KNAPP, Staff Assistant, Department of Justice, Washington, D. C. (John O. Henderson, United States Attorney, Western District of New York, Buffalo, N. Y., Leo J. Fallon, Special Assistant United States Attorney, Western District of New York, Buffalo, N. Y., on the brief), *for plaintiff-appellee.*

WILLIAM B. MAHONEY, Buffalo, N. Y., *for defendant-appellant.*

MOORE, *Circuit Judge*:

Since we have concluded this day (see *The United States of America* v. *Frank R. Coppola*, No. 25177), that there was no error in the receipt in evidence of Coppola's admissions, and since the other issues raised by Coppola's appeal are identical to those treated by Judge Waterman in his opinion affirming the convictions of Joseph Simmons and James Millio (see opinion in *The United States of America* v. *Joseph Simmons, a/k/a Joseph Synakowski, James Millio and Frank R. Coppola*, No. 25257, filed on July 20, 1959), the judgment of conviction of Frank R. Coppola is affirmed.

Clark and Waterman, *Circuit Judges*, dissent. See dissenting opinion in *The United States of America* v. *Frank R. Coppola*, No. 25177.

Appendix C

Section 2113 of the United States Code, *Crimes and Criminal Procedure*, Title 18, so far as pertinent, provides:

"§2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or

Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both;"

Rule 5. Proceedings before the Commissioner

"(a) Appearance before the Commissioner.

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

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JAMES R. BROWNING, Clerk

No. 153

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK R. COPPOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
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MALCOLM RICHARD WILKEY,
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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 153

FRANK R. COPPOLA, PETITIONER

v.

UNITED STATES OF AMER[illegible]

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The petition in this case covers two judgments, petitioner having been convicted at separate trials of two robberies (Court of Appeals Docket No. 25177, involving robbery of the Manufacturers and Traders Trust Company; Court of Appeals Docket No. 25257, involving robbery of the Liberty Bank of Buffalo). The majority and dissenting opinions of the Court of Appeals, sitting *en banc*, in the first of these cases

appear at 2 R. 46-73 [1] and are reprinted at Pet. 33-60. The majority and dissenting opinions of the *en banc* court in the second case appear at No. 25257, 3 R. 55-56, and are reprinted at Pet. 61-62. The opinions are not yet reported.[2]

JURISDICTION

The judgments were entered on May 20, 1960 (2 R. 76; No. 25257, 3 R. 59). The petition for writs of certiorari was filed on June 17, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's confessions of federal offenses to F.B.I. agents, made while in the custody of Buffalo city police, were properly admitted in evidence on the ground that the facts of this case do not bring it

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[1] "R." refers to the printed record, in two volumes (including the Court of Appeals proceedings, contained in volume 2), in No. 25177. "No. 25257, R." refers to the printed record, in three volumes (including the Court of Appeals proceedings, contained in volume 3), in No. 25257. The prefix figure in each instance indicates the volume. "Tr." refers to the reporter's transcript in case No. 25177; "No. 25257, Tr.", to the reporter's transcript in case No. 25257.

[2] The *en banc* court, in each case, reversed an earlier decision of a three-judge panel (which had divided two to one), vacated the division's judgment and withdrew its opinion (2 R. 74; No. 25257, 3 R. 57). The original majority (2 R. 1-8) and dissenting (2 R. 9-16) opinions in case No. 25177 appear at Pet. 16-23, 24-32. The original majority and dissenting opinions in case No. 25257 appear at No. 25257, 3 R. 2-3, 12. See also Pet. 45-46, n. 1.

within the principle of *McNabb* v. *United States*, 318 U.S. 332.

STATEMENT

On July 11, 1957, petitioner was convicted in the United States District Court for the Western District of New York, following a jury trial, of robbing a branch bank of the Manufacturers and Traders Trust Company, a member bank of the Federal Reserve System, in violation of 18 U.S.C. 2113(a) (1 R. 3-5, 195-196). On December 2, 1957, following a separate jury trial in the same court, he was convicted of aiding and abetting the robbery of a branch of the Liberty Bank of Buffalo, likewise a member bank of the Federal Reserve System (No. 25257, 1 R. 9-11, 163, 164). For each offense he was sentenced to 20 years' imprisonment, the terms to run consecutively (1 R. 195-196; No. 25257, 1 R. 164-165). On appeal, a three-judge panel reversed (one judge dissenting) [3] both convictions on the ground that confessions to the offenses by petitioner, made to agents of the Federal Bureau of Investigation while he was in the custody of the city police of Buffalo, New York, had been improperly received in evidence under the rule of *Anderson* v. *United States*, 318 U.S. 350, in which this Court applied the rationale of *McNabb* v. *United States*, 318 U.S. 332, to the particular factual situation there involved (see *infra*) (Pet. 16-32, 45-46,

[3] The majority consisted of Judges Waterman and Washington (the latter, a regular member of the Court of Appeals for the District of Columbia Circuit, sitting by designation). Judge Moore dissented.

n. 1). On motion of the government, a rehearing *en banc* was ordered, and, on May 20, 1960, the *en banc* court, dividing three to two,[4] sustained the convictions (Pet. 33-60, 61-62).

Both cases present the same issue.[5] The relevant facts (adduced in each case at a hearing held out of the presence of the jury) may be summarized as follows:[6]

On February 15, 1956, a branch bank of the Manufacturers and Traders Trust Company (the "M. & T. Bank") was held up and robbed by two masked men (Tr. 41-52). The Federal Bureau of Investigation and the Police Department of the City of Buffalo had

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[4] Judge Moore wrote the majority opinion, in which Chief Judge Lumbard and Judge Friendly concurred. Judges Waterman and Clark dissented.

[5] The confessions involved in the two cases—an oral and a written confession in the Manufacturers and Traders Trust Company case (1 R. 132-143) and an oral confession in the Liberty Bank case (No. 25257, 1 R. 130-137)—were made in the course of a single interview (see *infra*).

[6] At pages 9-10 of the petition, reference is made to testimony by petitioner that he was deprived of wholesome food during the period of his confinement in the Buffalo police headquarters and that his confessions were otherwise involuntarily made. This testimony was sharply disputed (see, *e.g.*, 1 R. 17, 22, 27, 30, 35-36, 37, 41; No. 25257, 1 R. 95, 107). In each case the substance of the testimony bearing on the issue of voluntariness was repeated before the jury, and the trial judge submitted the issue to the jury for resolution (see 1 R. 129-130, 185-186, 189-190; No. 25257, 1 R. 129, 155-156, 159). Each jury presumably resolved that issue against petitioner. Since that issue is in any event no longer involved, our summary of the facts will omit reference to the testimony pertinent thereto.

this robbery under investigation from the time of its occurrence (1 R. 117-118). They "worked very closely" with each other in attempting to solve it (1 R. 117). If they "had any information [they] wanted to work on", they would "assign a detective and an agent together to work it out" (1 R. 118). Petitioner was a prime suspect as early as February 20, 1956, five days after the robbery (Tr. 168).

On October 2, 1956, another Buffalo bank, a branch of the Liberty Bank of Buffalo, was held up and robbed (No. 25257, 1 R. 134-137). This robbery was also within the investigative jurisdiction of the F.B.I. (1 R. 113, 119).[7]

On January 7, 1957, John Roche, Special Agent in Charge of the Buffalo office of the F.B.I., informed John Golombeck, Chief of Detectives of the Buffalo Police Department, that the F.B.I. had received information that a Buffalo butcher whose first name was Paul and whose last name was unknown had been robbed on the night of January 4, 1957, by petitioner and two other men, named D'Antuono and Simmons; he asked Golombeck if the Buffalo police had any record of such a robbery.[8] Golombeck told

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[7] It was also, of course, within the jurisdiction of the Buffalo police. Whether the F.B.I. and the Buffalo police worked together on this case does not appear from the record.

[8] One Buyers, a confidant of petitioner, to whom petitioner had revealed his participation in both the M. & T. and Liberty Bank robberies (Tr. 242-243; No. 25257, Tr. 547-549), had informed the F.B.I. of these disclosures, and thereafter made regular reports to the F.B.I. regarding his

Roche that the police did have a record of such a robbery, and that the victim's name was Paul Redlinski. Roche furnished Golombeck with photographs of petitioner and his two companions, and, on the following day, Redlinski identified petitioner, from his photograph, as one of the persons who had held him up. (1 R. 111, 97, 104.)

On January 9, 1957, Roche informed Golombeck that the F.B.I. had received information that petitioner, D'Antuono, and Simmons were contemplating the commission of another robbery at 10 o'clock on the following morning, and that it was possible that the place which the robbers were planning to hold up was the El Chico Tavern on Clinton Street (1 R. 112). Roche also gave this information to John Dwyer, the District Attorney for Erie County, "so that he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up" (1 R. 112-113). Roche further told Dwyer that the F.B.I. had been investigating petitioner in connection with the M. & T. Bank robbery, the Liberty Bank robbery, and the "contemplated" robbery of a third Buffalo bank, the Marine Trust Company (1 R. 113).

The following morning, January 10, 1957, Golombeck, in the company of Lieutenant Harry Klenk and another police officer of the Buffalo Police Depart-

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associations with petitioner (Tr. 268; No. 25257, Tr. 558). Buyers testified at length before the juries in these cases concerning statements petitioner made to him relative to his participation in these robberies (Tr. 243 *ff.*; No. 25257, Tr. 547 *ff.*).

ment, proceeded by automobile to the vicinity of Clinton and Babcock Streets in Buffalo (near the El Chico Tavern), where, some time between 9:30 and 11 a.m., they saw petitioner, D'Antuono, and Simmons in an automobile and took them into custody (1 R. 77-78, 82, 97-98, 112). Petitioner and his companions were committing no crime at the time (1 R. 77) and the officers had no warrant for their arrest (1 R. 82).

The decision to apprehend petitioner and his companions was solely that of the local police officers (1 R. 84, 105). No F.B.I. agent was present at the time, nor had the F.B.I. requested such action (1 R. 105, 121).

Shortly after 11 a.m., Golombeck telephoned Roche and told him that he and the other Buffalo officers had apprehended petitioner, D'Antuono, and Simmons in the vicinity of the El Chico and that they were then on their way to police headquarters with them (1 R. 112, 118). Roche, asked at the hearing if he was "expecting a call from Golombeck at the time [he] got it," said that he was "not necessarily" expecting such a call, but that he "thought" Golombeck would call "if anything had developed" (1 R. 121). Golombeck testified that he made this call as "a courtesy extended to [Roche] for supplying me with the information" (1 R. 106).

Petitioner and his two companions were taken by the local police officers to the Buffalo police headquarters, where they were placed in a cell block at about 11 a.m. (1 R. 79, 99). No formal charge was placed against petitioner immediately (1 R. 78-79).

Although he was "booked" at 3:45 p.m. on the charge of robbery of Paul Redlinski, and at 4:15 p.m. on a burglary charge preferred by one Sidell (1 R. 86), petitioner was not arraigned by state authorities until approximately 2 or 3 p.m. on the following day (1 R. 82, 106; No. 25257, 1 R. 106-107; see *infra*, pp. 12-13).[9] From time to time during the afternoon and evening of January 10 (the day of the arrest), petitioner was interrogated by state and local officers concerning his connection with numerous state offenses, including the Redlinski robbery, the Sidell burglary, a crime in Niagara Falls (not more specifically identified), and two bank robberies[10] (1 R. 87). Among those who questioned him were members of the Buffalo Police Department, officers of the Bureau of Criminal Investigation of the New York State Police, and the local District Attorney's office (No. 25257, 1 R. 99).

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[9] New York law provides that an arrested person "must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night" (Code of Criminal Procedure, § 165). A two-hour lapse between arrest and arraignment was held not to constitute an unnecessary delay in *Tierney* v. *State*, 178 Misc. 421, 34 N.Y.S. 2d 749 (Ct. of Claims, 1942), modified on other grounds, 266 App. Div. 434, 42 N.Y.S. 2d 877 (1943), 292 N.Y. 523 (1944). Delays of 14 hours (*Bass* v. *State*, 196 Misc. 177, 92 N.Y.S. 2d 42 (Ct. of Claims, 1949)) and 24 hours (*People* v. *Cohen*, 243 App. Div. 245, 276 N.Y.S. 851 (1935); *People* v. *Kelly*, 264 App. Div. 14, 35 N.Y.S. 2d 55 (1942)) have been held to constitute unnecessary delays.

[10] The two bank robberies were described as "[t]he bank holdup at North End * * * and the holdup of the Market Bank out on Clinton Street" (1 R. 87). It is not clear whether the banks thus described were the Liberty and M. & T. banks or other banks.

In addition, petitioner appeared in three "showups" or "lineups" conducted by the Buffalo police (1 R. 9, 48, 52, 53, 90).

Shortly before noon on the day of the arrest (January 10), following the receipt of Golombeck's telephone call, agent Roche proceeded to the Buffalo police headquarters "to ascertain * * * whether or not anything had occurred relative to" the bank robberies which the F.B.I. had under investigation (1 R. 113, 119). At the police station, Roche saw Golombeck, Klenk and Dwyer, and was informed that petitioner and his companions had not as yet been questioned (1 R. 119). Roche, Golombeck, Klenk and Dwyer then went to lunch together, following which Roche returned directly to the police station (1 R. 119-120).

At about 2:30 or 3:30 p.m., Roche talked to petitioner in the presence of District Attorney Dwyer (1 R. 114). Dwyer explained to petitioner who he was and who Roche was, told petitioner he was interested in him in connection with "a series of various crimes," and proceeded to question him about the Redlinski hold-up (1 R. 114). After the conversation between Dwyer and petitioner had gone on for a while, Roche, according to the latter's testimony, "interjected and asked [petitioner] about the M. & T. bank robbery" (1 R. 114, 120). In connection with that robbery, Roche asked petitioner if he had any objection to the F.B.I.'s searching his home in Niagara Falls (*ibid.*). Petitioner said he did not. Roche then explained to petitioner that the F.B.I. had a form known as a "permit to search" and asked if petitioner would have any objection to signing such

a form. Petitioner said he would not object. Roche then left Dwyer and petitioner and telephoned his office to request that one of the forms be sent him. When the form arrived, Roche took it to petitioner, who then declined to sign it, stating that he preferred that his home not be searched. (1 R. 114-115.)

According to petitioner, "When Mr. Dwyer questioned me in front of Mr. Roche it was on the M. & T. Bank". Asked if "several other robberies" were not mentioned in addition to the M. & T. robbery, petitioner replied that "They pointed out their information on other robberies, but [said that] by cooperating on the M. & T. Bank I would get a break on everything." To the question, "Who said that?", petitioner replied, "Either Mr. Dwyer or Mr. Roche," adding that he did not remember which because "Both men were talking at the same time." (1 R. 64.)

Later that day, Roche assigned Special Agents Robert Eddy and Omar Jenson to interview petitioner (1 R. 115).[11] At approximately 8 p.m., Eddy and Jenson went to the police headquarters (1 R. 8), where they sought and obtained from Chief Golombeck permission to interview petitioner (No. 25257, 1 R. 77). Because petitioner, at the time, was participating in a lineup being conducted by the police, the agents had to wait until the lineup had been completed before they could commence their interview (1 R. 9; No. 25257, 1 R. 76-77).

The interview lasted from approximately 9 p.m. to shortly after 12:45 a.m. (1 R. 11). At the com-

[11] Other agents were assigned to interview D'Antuono and Simmons (1 R. 115).

mencement of the interview, agent Eddy told petitioner that he did not have to talk to the agents, that any statement he might make to them could be used against him in court, and that he had a right to an attorney (1 R. 17, 22, 27, 31, 39). Petitioner told the agents that he "understood those rules" and remarked that Eddy had "told them to him once before" [12] (1 R. 17). At 9:41 p.m., he "started to tell us about the crimes he was involved in," including the M. & T. and Liberty Bank robberies (1 R. 28, 138-140; No. 25257, 1 R. 131-137). The latter part of the interview (from 11:37 p.m. till shortly after 12:45 a.m.) was taken up with the preparation by agent Eddy of a written confession, as dictated to him by petitioner, of petitioner's role in the M. & T. crime (1 R. 30, 38; G. Ex. 43, 1 R. 142-143).

The agents' interview with petitioner was at one point interrupted for a period of between two and five minutes when District Attorney Dwyer entered the room to show petitioner "a boot which had been taken from another man" and ask him questions about it (1 R. 40; No. 25257, 1 R. 73). The discussion had nothing to do with the M. & T. robbery (1 R. 40). Agent Eddy testified he could not recall how many questions Dwyer asked because he "didn't pay very much attention to what Mr. Dwyer was talking about. It was a matter other than we were discussing" (No. 25257, 1 R. 73).

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[12] Petitioner had on a previous occasion, approximately two weeks after the M. & T. robbery, been interrogated by Eddy concerning that robbery (1 R. 54; Tr. 73 *et seq.*).

On two occasions during the interview (and those of other agents with D'Antuono and Simmons, which were simultaneously going on), Lieutenant Klenk went to the cell block for the purpose of interrogating the prisoners about matters he and the city police were interested in, and on a third occasion he went to procure them for purposes of a lineup, but in each instance desisted on seeing that their interviews with the agents were still in progress (1 R. 89, 90, 91; No. 25257, 1 R. 103, 110). He did so "[a]s a matter of courtesy", he explained (1 R. 91). "[I]n case there are visiting policemen from other cities or towns or state police or F.B.I.," he said, "if we have a prisoner and they are talking to them we show them the courtesy of letting them talk to our prisoners" (*ibid.*). "I was able if I cared to", Klenk testified, to "take [the prisoners] away from [the agents]. They were our prisoners, but [the agents] were visiting headquarters and we showed them the courtesy of letting them talk with them" (No. 25257, 1 R. 103).

At approximately 10 o'clock the following morning, January 11, 1957, a complaint charging petitioner with violations of the federal bank robbery statute was filed, at agent Roche's direction, with the United States Commissioner (1 R. 116; No. 25257, 1 R. 115-116). At about the same hour, Roche called Lieutenant Klenk to request that the Buffalo police surrender custody of petitioner to the F.B.I. "so that they [the F.B.I.] could arraign him" on the federal charges (1 R. 88, 116). In the apparent belief that this was agreeable to the Buffalo police, and that the police would transfer the custody of petitioner to the

F.B.I. before 11 a.m., an appointment was made by the F.B.I. with the United States Commissioner for the arraignment of petitioner on the federal charges at 11 a.m. (1 R. 116). Klenk, however, after talking to Roche, called District Attorney Dwyer and told him of Roche's request. Dwyer told Klenk to wait until he heard further from Dwyer before taking any further action. Shortly thereafter, Dwyer called Klenk back and requested that he take petitioner to Dwyer's office, which Klenk did, arriving shortly before 11 a.m. Petitioner remained there for approximately two hours. (1 R. 88.) Meanwhile, when petitioner had not been brought to the United States Commissioner's office by 12:30 p.m. (it was Roche's understanding that petitioner would be brought by the Buffalo police to the Commissioner's office, where, after being delivered to the F.B.I., he would be federally arraigned), Roche called the Buffalo police headquarters to determine the cause of the delay. On learning that petitioner (and the other two prisoners) were at Dwyer's office, Roche proceeded there, where he was advised that the prisoners had not yet been arraigned "on the State charges" and that arrangements to that end were being made. (1 R. 116; see also No. 25257, 1 R. 105-106.) At approximately 2 or 3 p.m., petitioner was arraigned on the state charges in the Buffalo City Court (1 R. 82, 106; No. 25257, 1 R. 106-107), following which, at approximately 4 p.m., he was delivered to the federal authorities and promptly arraigned before the United States Commissioner (1 R. 105, 116-117).

ARGUMENT

1. In *Anderson* v. *United States*, 318 U.S. 350, this Court, applying the rationale of *McNabb* v. *United States*, 318 U.S. 332, to the factual situation there involved, reversed federal convictions based on confessions made to federal agents while the defendants were being detained by state authorities in violation of a state statute—a statute prohibiting the commitment to prison of any person for a criminal matter prior to examination before a state magistrate. Pointing out that the defendants were not federally arrested and arraigned until days after they had been intensively questioned by the federal officers while in state custody and their confessions obtained, the Court concluded that "The considerations which led to that decision [*McNabb*] also govern this case" (318 U.S. at 355) because (*id.*, p. 356):

> There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers.

Petitioner urges (Pet. 13-15), and the dissenting judges below concluded, that the *Anderson* decision and rationale govern this case as well. We submit, however, that the majority below were correct in holding this case to be materially different on its facts from *Anderson*.

The confessions involved in *Anderson* were products of a true collaborative effort by state and federal authorities (the Sheriff of Polk County, Tennessee, and agents of the F.B.I.) as they jointly sought to solve the identical crime, the dynamiting of TVA-owned power lines. The *Anderson* record shows that the federal agents and the sheriff and his deputies worked hand in hand in the interrogation of the prisoners. The sheriff or one of his deputies would apprehend a suspect for questioning, and the federal agents would proceed to conduct the questioning, often in the presence of one or more of the state officers (Record, No. 10, Oct. Term, 1942, pp. 172-173, 176, 181, 305, 308, 309, 333). Further illustrative of the close "working arrangement" which existed between the state and federal officers in *Anderson* is the fact that the sheriff was present at some of the federal agents' meetings at which they mapped out courses of action (*id.*, pp. 169-170, 334-335, 436-437, 472-473), including one at which the participants "went over a list of individuals that we thought might possibly be implicated" (*id.*, p. 170). In addition, federal agents, in some instances, accompanied deputies when the latter went out to bring suspects in for questioning (*id.*, pp. 630, 633, 635, 746-748, 792-798).[13]

No such collaborative effort was involved here. The evidence indicates that the apprehension of petitioner

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[13] For other indications of the close "working arrangement" between the state and federal officers, see *id.*, pp. 186-187, 191, 194, 195, 196, 302, 332, 375, 427-428, 442, 467, 540, 556, 801-802, 817.

was solely the act and responsibility of the city police, that petitioner's detention thereafter was likewise the act and responsibility of the local authorities, and that the state and local authorities and the federal agents acted substantially independently of each other in interrogating petitioner. The federal officers had to obtain the permission of the city police to question petitioner (*supra*, p. 10). The F.B.I. agents had to wait until a police lineup had been concluded before they could commence their interview (*supra*, p. 10). The F.B.I. interview was interrupted by Dwyer, a state official, as he conducted business of his own with petitioner (*supra*, p. 11). Klenk, the police lieutenant, wanted to question petitioner about matters the police were interested in while the F.B.I. interview was in progress; he refrained from doing so, but solely as a matter of courtesy to the F.B.I.; there was no question that Klenk regarded petitioner as one of "our prisoners" (*supra*, p. 12). The evidence further shows that the state and local officers questioned petitioner about crimes they were interested in and that the federal officers questioned him about crimes they were interested in. There were numerous crimes as to which the state officers questioned petitioner with which the federal officers had no concern. The particular crimes with which the federal officers were concerned were, it is true, also the concern of the state and local officers, but even as to those crimes the evidence indicates that, with the possible exception of the brief joint interview of Dwyer and Roche with petitioner on the afternoon of January 10 (see *supra*, pp. 9-10), there

was no joint questioning. Finally, the state and local authorities' refusal to surrender the custody of petitioner to the F.B.I. for the latter's arraignment purposes until after they had accomplished their own arraignment purposes [14] (*supra*, pp. 12-13) shows that the state and local authorities considered petitioner to be at all times their prisoner, and that they refused to subordinate their interests to those of the federal authorities until it suited their convenience to do so.

It is indeed true, as petitioner stresses (Pet. 13), that *prior to petitioner's apprehension* the F.B.I. and the city police collaborated closely with each other in attempting to solve the M. & T. Bank robbery (*supra*, pp. 4-5). But this does not indicate that there was a "working arrangement" (in the *Anderson* sense) between the police and the F.B.I. in *detaining petitioner and interrogating him* concerning his part in that crime. As observed by the majority below, "If this cooperation [between the F.B.I. and the Buffalo police in attempting to solve the M. & T. case] reached the point of arrest and detention by local police for the purpose of enabling federal officers to question [petitioner] concerning [that crime] for a period of time forbidden to federal officers by Rule 5(a) of the

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[14] As pointed out by the majority below, the F.B.I. interrogation of petitioner (on the evening of January 10) "did not contribute to any delay in [his] arraignment [on the state charges]" (Pet. 39). This is because (as both counsel agreed on oral argument) petitioner could not have been arraigned after 5 p.m. on January 10 in the Buffalo City Court (where he was in fact arraigned on the following afternoon), so that the earliest time after 5 p.m. on January 10 that he could have been arraigned in that court was the morning of January 11 (see *ibid.*).

Federal Rules of Criminal Procedure, admissions thus obtained would properly be excluded. * * * The rule excludes confessions when the 'working arrangement' includes the illegal detention—in other words, when federal law enforcement officers induce state officers to hold the defendant illegally so that they may secure a confession. However, to bring a case within this rule there must be facts, as there were in *Anderson*, not mere suspicion or conjecture" (Pet. 41).

The record shows cooperation and mutual courtesy between the federal and state authorities as each went about its respective business; it does not show a "working arrangement" resulting in a "collaborati[ve]" deprivation of a prisoner's rights in the sense condemned in *Anderson*. Cf. *White* v. *United States*, 200 F. 2d 509, 511-513 (C.A. 5), certiorari denied, 345 U.S. 999; *Brown* v. *United States*, 228 F. 2d 286, 289 (C.A. 5), certiorari denied, 351 U.S. 986; *Horne* v. *United States*, 246 F. 2d 83 (C.A. 5), certiorari denied, 355 U.S. 878; *Papworth* v. *United States*, 256 F. 2d 125, 127-129 (C.A. 5), certiorari denied, 358 U.S. 854; *Carpenter* v. *United States*, 264 F. 2d 565, 571 (C.A. 4); *Tillman* v. *United States*, 268 F. 2d 422, 425 (C.A. 5). "In the absence of any evidence of collaboration to achieve an unlawful end," there is no basis, as the court below stated (Pet. 42), for excluding "uncoerced confessions made during a detention by state officers which the Federal officials did not induce and were powerless to prevent." [15]

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[15] This conclusion is not impaired by *Elkins* v. *United States*, No. 126, Oct. Term, 1959, decided June 27, 1960, which turned on the defendant's claim that evidence obtained

2. Judge Waterman, in his original majority opinion (later ordered withdrawn by the *en banc* court), referring to the government's contention that to prohibit the use in federal courts of confessions obtained by federal officers during an illegal detention by the local police it is necessary that the detention be "at the instance or at the request of federal officers", said (Pet. 20-21, 49-50):

> Clearly such an interpretation of the phrase "working arrangement" [as used in *Anderson* v. United States, *supra*, 318 U.S. at 356] would result in an affirmance of the decision below, for the facts surrounding defendant's arrest do not, in our opinion, require the inference that the Buffalo police acted upon the request of the FBI, expressed or implied.

In his dissenting opinion following the rehearing *en banc*, the same judge, as an alternative basis for reversal, expressed the view (Pet. 55-60)—based on inferences drawn from his reading of the record, and contrary to his original conclusion, *supra*—that petitioner's arrest and detention by the local officers were designed, "at least in part", to "satisfy the desires of the FBI" and to make possible the "circumvent[ion]" by the F.B.I. of the rule of the *McNabb* case, 318 U.S. 332 (Pet. 55, 59).

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from him was seized in violation of *constitutional* rights. We deal here with a claim which has no constitutional aspect—a claim that petitioner's arraignment by state officials in the state court for state offenses was not as prompt as required by state law. None of the judges of the Court of Appeals and neither of the two trial judges found any basis for concluding that petitioner's confession was coerced or was *constitutionally* invalid.

Judge Waterman's inference is directly contrary to the findings of the two trial judges who presided in these cases.[16] The issue was purely one of fact, and the trial judges had the advantage of seeing and hearing the witnesses. Under well settled principles, therefore, their findings are conclusive unless clearly erroneous.[17]

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[16] In the Liberty Bank case, following the hearing out of the presence of the jury, counsel for the government asked the presiding judge if he found "as a matter of fact no working agreement existing between the F.B.I. and the Buffalo Police Department with respect to the Buffalo Police arresting this man or men and holding them so the F.B.I. could question them." The judge replied that "[t]hat was a necessary prelude to" his finding that there had been no unnecessary delay in the federal arraignment of petitioner. (No. 25257, 1 R. 130.) For the relevant findings in the M. & T. case, see 1 R. 129.

[17] In one of the two cases, counsel for petitioner expressly conceded at the hearing that he "d[id] not claim that the Buffalo Police made an arrest at the behest of the F.B.I," (No. 25257, 1 R. 120). Government counsel, who had commenced to question agent Roche on the subject, then said, "With that on the record I have no further questions" (*ibid.*). Later in the hearing, evidently for the purpose of making certain that there was no need to present further proof on the issue, government counsel stated his understanding that counsel for petitioner was making no "claim that the arrest was made by the local authorities at the behest of the F.B.I.", and counsel for petitioner repeated his concession (No. 25257, 1 R. 130). As a consequence, the government adduced no further evidence on the subject.

The dissenting judges below seek to discount the significance of counsel's concession by distinguishing between "behest" and "request" (Pet. 59-60). In the context in which counsel's concession was made, see *supra*, we doubt that counsel had any such distinction in mind. In any event, it is clear that as a consequence of the concession the govern-

We submit that the majority below correctly concluded that the trial judges' findings were supported by the record and must be sustained. The F.B.I. (as noted above), upon learning through its confidential informant (see fn. 8, *supra*, pp. 5-6) that petitioner and two companions, D'Antuono and Simmons, had committed a local crime over which it had no jurisdiction (the Redlinski robbery), conveyed its information to the Buffalo police. This was no more than a normal act of federal-state cooperation in law enforcement. When the F.B.I. further learned, evidently from the same source, that the same three men were planning to commit another state offense (the robbery of a local tavern), it was of course obligated to make this information known to the local authorities so that preventive measures could be taken. When the police found the men in the area in which the F.B.I.'s informant said they would be and at the time predicted, and thereupon took them into custody, it was both natural and proper that they should inform the F.B.I. of this development. Since the F.B.I. was investigating these same men in connection with federal offenses, it was reasonable for the F.B.I., on learning that the men were in custody, to seek permission of the police to question them, and it was equally understandable that the police, particularly considering the helpful information it had received from the F.B.I., should grant

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ment refrained from developing the point further. In these circumstances any ambiguity that might be thought to survive in the record ought not to be grounds for disturbing the trial judge's findings.

such permission. The majority concluded that the trial judges were fully warranted in finding "that the F.B.I. in no way caused or contributed to Coppola's detention by the Buffalo police" (Pet. 35). The majority stated further that "there is in this record no basis for the conclusion that the apprehension and continued detention of Coppola and his companions was at the behest of federal officers or for the purpose of aiding any investigation they wished to conduct" (Pet. 40). It is not infrequent that different appellate judges, having appraised a record, come away with different impressions of the facts. That hardly makes the case one appropriate for review in this Court, especially when the prevailing view in the Court of Appeals upholds the validity of findings independently reached by two district judges.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writs of certiorari should be denied.

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No. 153

IN THE

Supreme Court of the United States

October Term, 1960

FRANK R. COPPOLA,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

Opinions Below

The original majority and dissenting opinions of the Court of Appeals, dated July 20, 1959, reversing both judgments of conviction, appear at pages 267-280 of the Transcript of Record. A re-hearing *en banc* was granted (Tr. 283) and upon re-argument these opinions were withdrawn (Tr. 307, 321).

The majority and dissenting opinions of the Court of Appeals are reported at 281 F. (2d) 340.

Jurisdiction

The judgments of the Court of Appeals were entered on May 20, 1960 (Tr. 308, 322). The petition for Writs of Certiorari was filed on June 17, 1960 and was granted on October 10, 1960 (Tr. 323). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

Whether, under the rule of *Anderson v. U. S.*, 318 U. S. 350; 63 S. Ct. 599, the confessions, oral and written, secured by Federal agents from petitioner were obtained under such a "working arrangement" between local and Federal officers as would make them inadmissible in evidence against petitioner.

or

Whether, even in the absence of such a "working arrangement", such confessions are nevertheless inadmissible against petitioner because they were secured during a protracted illegal detention of petitioner by State authorities, following an illegal arrest.

Statutes Involved

Rule 5. Proceedings before the Commissioner.

"(a) Appearance before the Commissioner.

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a com-

missioner or other officer, a complaint shall be filed forthwith."

Section 2113 of the United States Code, *Crimes and Criminal Procedure*, Title 18, so far as pertinent, provides:

"§ 2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or

Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both;".

Statement

On July 11, 1957, petitioner was convicted in the United States District Court for the Western District of New York, following a jury trial, of robbing a branch bank of the Manufacturers and Traders Trust Company, a member bank of the Federal Reserve System, in violation of

18 U. S. C. 2113(a) (Tr. 1-2, 177-178). On December 2, 1957, following a separate jury trial in the same court, he was convicted of aiding and abetting the robbery of a branch of the Liberty Bank of Buffalo, likewise a member bank of the Federal Reserve System (Tr. 179-182, 266-267). For each offense he was sentenced to 20 years' imprisonment, the terms to run consecutively (Tr. 177-178, 266-267). On appeal, a three-judge panel reversed (one judge dissenting)* both convictions on the ground that confessions to the offenses by petitioner, made to agents of the Federal Bureau of Investigation while he was in the custody of the city police of Buffalo, New York, had been improperly received in evidence under the rule of *Anderson v. United States*, 318 U. S. 350, in which this Court applied the rationale of *McNabb v. United States*, 318 U. S. 332, to the particular factual situation there involved (Tr. 267-281, 309-319). On motion of the government, a rehearing *en banc* was ordered, and, on May 20, 1960, the *en banc* court, dividing three to two,** sustained the convictions (Tr. 281-282, 308, 322).

Both cases present the same issue. The relevant facts (adduced in each case at a hearing held out of the presence of the jury) may be summarized as follows:

First Case: M and T Bank robbery—February 15, 1956:

On February 15, 1956, the Clinton-Bailey Branch of the Manufacturers and Traders Trust Company in Buffalo, New York was held up by two men. The men es-

* The majority consisted of Judges Waterman and Washington (the latter, a regular member of the Court of Appeals for the District of Columbia Circuit, sitting by designation). Judge Moore dissented.

** Judge Moore wrote the majority opinion, in which Chief Judge Lumbard and Judge Friendly concurred. Judges Waterman and Clark dissented.

caped with approximately $52,529.00 of United States currency. This bank was insured by the Federal Deposit Insurance Company.

On or about February 25th or 27th, 1956, the defendant Coppola was brought to the Manufacturers and Traders Trust Company by agents of the Federal Bureau of Investigation for the purpose of having the events of the holdup re-enacted. This was pursuant to a pre-arrangement between Albert J. Eger, branch manager of the Clinton-Bailey branch of the bank, and members of the F.B.I. The defendant Coppola put on a stocking mask and the F.B.I. agents gave him instructions as to what he was to do. He approached the branch bank manager, then proceeded towards the work cages, followed by F.B.I. agents; that he was back of the cages for three or four minutes and then retraced his steps to the manager's desk and then went into the hallway of the bank (Tr. 4-6).

No arrest was made of the defendant after the re-enactment of the holdup, charging him with being one of the participants in the same.

On January 7, 1957, approximately eleven (11) months after the re-enactment of the holdup, John F. Roche, Special Agent of the F. B. I. in Buffalo, New York, contacted John Golombeck, Chief of Detectives of the Buffalo Police Department, as to information concerning an alleged unsolved crime outside the jurisdiction of the Federal authorities (Tr. 106-107). Again on January 9, 1957 Agent Roche contacted Golombeck, Chief of Detectives, and relayed to him information concerning a contemplated holdup. On January 10, 1957 Agent Roche received a telephone call from Golombeck to the effect that "the defendant Coppola and others had been *arrested* and they

were on their way to police headquarters with them" (Tr. 107-108). Agent Roche informed the Erie County District Attorney, Dwyer, of the same information on January 9, 1957 and, in addition, told the said Dwyer that the defendant was being investigated by the F. B. I. in connection with the robbery of the Manufacturers and Traders Trust Company (Tr. 108).

On January 10, 1957, Agent Roche went to Buffalo Police Headquarters *shortly before noon;* that he saw Chief Golombeck, District Attorney Dwyer, and Detective Klenk and had lunch with them (Tr. 113); that he returned to police headquarters at 2:30 P. M. with District Attorney Dwyer, and at 3:30 P. M. saw the defendant in the cell block and questioned him about the M & T bank robbery (Tr. 109); that shortly before 9:00 P. M. on the same day he assigned Special Agents Eddy and Jenson to interview Coppola; Agents Moulin and Jenkins to interview D'Antuono, and Agents Obuhanick and Liddy to interview Simmons (Tr. 110).

Agent Roche further testified that he and other F. B. I. agents were investigating the robbery of the Clinton-Bailey branch of the Manufacturers and Traders Trust Company from February 15, 1956 up to and including *January 7, 1957;* that the F. B. I. worked very closely with the Buffalo Police Department in this particular investigation (Tr. 112); that if he had information they wanted to work on mutually they would assign a detective and an agent to work together on it (Tr. 113).

Agent Roche expected a call from Detective Chief Golombeck if anything developed (Tr. 115-116). That defendants, after arraignment in City Court, were turned over to Federal authorities around four (4) o'clock on

January 11, 1957, and were arraigned before Commissioner Butterfield (Tr. 111).

On January 10, 1957, the defendant and others were arrested and taken to police headquarters where they were lodged in cells and no charge was placed against defendant during the entire day (Tr. 75-78). On January 11, 1957 a charge was placed against the defendant at 1:00 P. M. and defendant was arraigned in the City Court of Buffalo on January 11, 1957 at approximately 2:00 P. M. There was no warrant for the arrest of the defendant prior to 2:00 P. M. on January 11, 1957. It was conceded that defendant had been arrested and held on *suspicion* from 10:00 o'clock on the morning of January 10, 1957 until ten minutes to one o'clock in the afternoon of January 11, 1957 (Tr. 80-81). That at about 10:00 o'clock on January 11, 1957 the F. B. I. requested custody of defendant and others. There was no compliance with this request. After arraignment in the City Court of Buffalo the defendant was delivered into the custody of Mr. Henderson, United States Attorney (Tr. 85-86).

Detective Klenk identified Government's Exhibit 41, and the same was marked in evidence. This was the daily memoranda of arrests used in the Buffalo Police Department to record the time a person is brought in, his name, age, the charge, the arresting officers, and the final disposition (Tr. 83). That the time of day recorded on Exhibit 41 as to defendant Coppola, namely 3:45 P. M. and 4:15 P. M., indicated the time that the defendant was brought down to the cell block and officially put on the memoranda of arrests in the afternoon of that day (Tr. 89-91).

That the charges of 2124 and 404 of the Penal Law were made on Exhibit 41 on January 11, 1957 and the desig-

nation of 3:45 and 4:15 P. M. on Exhibit 41 did not indicate the time that such charges were made against the defendant (Tr. 92).

Klenk further testified that on January 10, 1957, between the hours of 9:00 P. M. and 12:30 A. M., he went to the cell block to question defendant. That each time members of the F. B. I. were questioning him. That he refrained from questioning defendant because of the policy of courtesy extended to officers of the F. B. I. and other law-enforcing agencies (Tr. 88-89).

John C. Golombeck, Chief of Detectives, Buffalo Police Department, testified that he received information from F. B. I. Agent Roche on January 7th, 9th and 10th, 1957. That on January 10, 1957 he was in a car with Detectives Klenk and Segit; that the car in which defendant was riding was directed to pull over, *on suspicion;* that no crime was being committed at that time (Tr. 93-95). That defendant and others were taken to police headquarters and to circumvent the press and the taking of pictures the defendant and others were taken to the fourth floor and placed in a cell block.

He testified that he placed a charge against Coppola on the afternoon of January 10, 1957 around 3:30 or 4:00 o'clock; that he did not make the notation on Exhibit 41 as to the time; that he was pretty sure that his relief man placed the time (Tr. 97-98).

When his attention was called to the fact that there was testimony that the time on Exhibit 41 represented the time that defendant was brought from the cell block to the detective bureau he said, "Well, then, it must be so" (Tr. 99).

He called F. B. I. Agent Roche to let him know he apprehended defendant and others; that his department works hand in hand with the F. B. I. (Tr. 102).

In the afternoon of January 10, 1957 he saw several F. B. I. agents in Buffalo Police Headquarters, and again at night on the same day he saw a number of F. B. I. agents there; that in the evening he couldn't interrupt the F. B. I. agents who were questioning defendant, although he remained at headquarters until 12:30 A. M. (Tr. 96, 98).

Elmer F. Moulin, an F. B. I. agent, went to police headquarters in Buffalo just prior to 8:00 P. M. and was there until midnight. He was accompanied by another agent, Frank Jenkins. He saw other members of the F. B. I. there including Messrs. Eddy, Jenson, Obuhanick, Liddy and Roche (Tr. 102-104).

Robert Gordon Eddy, Special Agent of the F. B. I., testified that he learned at about noon of January 10, 1957 that Coppola had been taken into custody by the Buffalo Police Department on that day. That he and Agent Jenson went to the Buffalo Police Headquarters about 8:00 P. M. of the same day (Tr. 15); that at headquarters there were five other agents and Mr. Roche; that a show-up was in progress when he arrived; that at about 9:00 P. M. defendant was brought out and he and Agent Jenson interviewed defendant until shortly after 12:45 A. M. on January 11, 1957 (Tr. 16-18). That the office wherein he questioned defendant was barricaded and he could see other agents in another room interviewing others (Tr. 18); that he knew defendant was arraigned on January 11, 1957; that he did not place any charge against defendant; that he had no warrant for defendant's arrest (Tr. 20-21).

Upon being recalled the next day by the Government he testified that the defendant made no complaints about lack

of food or drink; he didn't say he was mentally or physically tired and didn't appear to be nervous or afraid; that the interview commenced at 9:04 P. M. and at 9:41 the defendant started to tell Agent Eddy about crimes he was involved in; that during the interview District Attorney Dwyer came into the room and also Special Agent Roche and Agent Jenkins came to the door of the room where the questioning was being conducted (Tr. 31-33). At 11:37 P. M. he started the statement (Government's Exhibit 43) and at this juncture he was not again advised orally of his rights. That between 9:02 and 9:41 P. M. the agents told defendant of some of the evidence they had developed (Tr. 34, 35); that they asked defendant the part that his wife and mother had in the Manufacturers and Traders Trust Company robbery and they couldn't answer his questions as to whether the agents intended to arrest his wife and mother (Tr. 38-39); that Agent Eddy prepared the first two paragraphs of Exhibit 43 and defendant dictated the balance (Tr. 41).

Agent Jenson's testimony substantially corroborated Mr. Eddy (Tr. 42-49). He testified that there was a short discussion about defendant's mother and wife being involved and if he was assured that they would not be prosecuted he would sign a statement (Tr. 48).

On the preliminary hearing, without the jury's presence, the petitioner testified that on January 10, 1957 at about 10:00 A. M., he was in an automobile on Clinton Street in the City of Buffalo, New York when a shotgun was pointed at him and he and others were told to "stick up their hands". He was taken to Buffalo Police Headquarters and put in a cell. He asked for food and was told, "This isn't a cafeteria, we didn't ask you to come up here" (Tr. 50-51). He was interrogated throughout the day as well

as being placed in a "lineup" on several occasions. He asked to use the telephone, and this request was denied. He asked to call his lawyer and the response was, "Where do you think you are, in a hotel?" He was further told, "Well, we don't feed around here." Later, he gave money for food and received a tunafish sandwich which he had to throw away. They gave him milk and then took it from him. He again asked for food, at nighttime, and was told "they didn't serve meals up there" (Tr. 51-56).

He testified that Agent Eddy, who had interrogated him a year previously, and Jenson had him brought into the office of the cell block at police headquarters about 8:00 or 8:30 P. M. Eddy told the defendant that his mother and wife were in a Niagara Falls jail. He asked to see the United States Attorney and a Federal Judge, both of which requests were denied (Tr. 56-57). They told the defendant several times that if he signed a statement they would recommend that the case against his mother and wife be dropped (Tr. 58-60). Agent Eddy prepared a statement; the defendant repeatedly told him he knew of no facts (Tr. 60-61); that up to the time of signing the statement he had no food or drink. He made the statement involuntarily because he was told his mother and wife were suffering and he was advised by the F. B. I. that the only way they could be released was to give a statement (Tr. 61-62).

On cross examination he testified that he made requests for a lawyer to Agents Eddy and Roche, Detective Chief Colombeck, Detective Klenk, the turnkey, and several other officers (Tr. 66).

At the conclusion of such testimony the Court stated that it would not hold that the confession was involuntary as a matter of law but would submit such question to the jury

as a question of fact (Tr. 122). Also, the Court held as a matter of law that there was no unusual delay in the arraignment of defendant (Tr. 120-121, 160). The Court also refused to submit the question of the unreasonableness of the delay to the jury as a question of fact (Tr. 160).

Upon resumption of trial before Court and jury, Agent Eddy testified as to the conversation he had with petitioner on the evening of January 10, 1957 shortly after 9:00 P. M. and continuing until 12:54 A. M. on the following morning. He also testified as to the preparation of a statement and the signing of the same by petitioner. This statement (Exhibit 43) was received in evidence over petitioner's objection (Tr. 123-132).

On cross examination, Agent Eddy admitted he was conversant with the detail of the robbery of the M & T Trust Company since February 15, 1956; that he learned of such details from employees of the bank (Tr. 134-137). Further, he admitted that in his conversation with petitioner he was telling petitioner of facts that he had learned from outside sources (Tr. 150). He never charged petitioner with any violation relative to the robbery of the M & T Trust Company; he never demanded that petitioner be released into his custody (Tr. 156).

Second Case: Liberty Bank robbery—October 2, 1956:

On October 2, 1956 three (3) men entered the Linwood-North Branch of the Liberty Bank of Buffalo and proceeded to stage a robbery of the said bank to the extent of $23,775.10 in United States currency. The men escaped with the assistance of an automobile driven by a fourth man who waited outside the bank. Between January 1, 1957 and January 10, 1957 John A. Roche, Special Agent in charge of the Buffalo office of the F. B. I., was conversant

with the facts surrounding the aforesaid bank holdup on October 2, 1956 and also all the statements made in November and December 1956 concerning such holdup, including those of William Buyers III, a deputy sheriff (Tr. 230-231).

The indictment against the petitioner, *et al.*, relating to the above crime was tried approximately six (6) months subsequent to the first case (Tr. 182).

A preliminary hearing was held by the Trial Court, without the presence of the jury, and the same members of the F. B. I. and the Buffalo police who had testified at the first trial testified on such hearing. The evidence produced was substantially the same as was produced at the first trial (Tr. 186-236). Motions to suppress the oral and written admissions of pet tioner on the basis of unreasonable delay in arraignment and involuntariness were denied by the Court (Tr. 237-238). The Court not only held that as a matter of law there was no delay in arraignment of petitioner, but upon request from the Government it also found *as a matter of fact* that there was no working agreement between the F. B. I. and the Buffalo police with respect to the arrest and detention of petitioner (Tr. 238).

Summary of Argument

In each of the within cases, the Trial Court conducted a hearing without the presence of the jury to determine whether or not the oral statement and written statement (Government's Exhibit 43), given by the petitioner, Coppola, to the agents of the Federal Bureau of Investigation while he was in the physical custody of the State authorities, had been extracted from Coppola in violation of his right under Rule 5(a) of the Rules of Criminal Procedure

and the principle set forth in *McNabb v. United States*, 318 U. S. 332 and *Anderson v. United States*, 318 U. S. 350.

At the conclusion of each hearing, the Trial Court ruled as a matter of law that there had been no reasonable delay in arraigning the petitioner on the Federal charges as would make the statements of the petitioner inadmissible in evidence against him (Tr. 120-121, 237-238). It is the petitioner's argument that upon the facts adduced at the hearings, these rulings deprived the petitioner of a fair trial and, therefore, constituted reversible error.

Petitioner further urges that even if the facts in the record fail to disclose the existence of a so-called working arrangement between the Federal and local authorities, petitioner's confessions should, nevertheless, be held inadmissible against him under an extension of the *McNabb* and *Anderson* rules which would make any confession obtained by Federal agents from a defendant while he was being illegally detained without arraignment by State officials, inadmissible in evidence in Federal prosecutions.

ARGUMENT

POINT I

The Court erred in ruling as a matter of law that there was no unusual delay in arraignment of petitioner before the U. S. Commissioner as would render inadmissible the testimony of Special Agents Eddy and Jenson of the Federal Bureau of Investigation or the written statement secured from petitioner during his illegal detention. The admission of the incriminating oral and written statements in evidence was error which deprived petitioner of a fair trial under the principles of Anderson v. U. S., 318 U. S. 350; 63 S. Ct. 599.

In *Anderson v. United States*, 318 U. S. 350, this Court enunciated a rule that evidence improperly secured by a Federal officer, through collaboration with State officers, is inadmissible in a trial in the Federal Courts. We contend that such decision, and the rationale expressed therein, is controlling as to our present case. Three appellate judges below have agreed with petitioner's contention and three judges have disagreed.

There is no material difference between the facts of the *Anderson* case and those of our present case, with one exception. The exception in our present case fortifies the petitioner's contention and arises from the fact that the F. B. I., in its investigation of the M & T bank robbery which occurred on February 15, 1956, took the petitioner into custody as early as February 25th or 27th, 1956. The agents escorted the petitioner to the M & T bank, the *situs* of the robbery. There they gave petitioner instructions as to what he was to do in re-enacting the robbery, as understood by the agents (Tr. 5-6). No arrest was made of peti-

tioner after the directed re-enactment of the said crime, and he was released from Federal custody.

In the *Anderson* case, the Sheriff of Polk County, Tennessee, and the agents of the F. B. I. were attempting to solve a crime relating to the dynamiting of the towers and power lines owned by the TVA. Such action was a violation of both State and Federal law. The record in such case suggests that the Sheriff, his agents, as well as the F. B. I. agents, jointly questioned the suspects and that Federal agents and Sheriff's deputies brought in suspects for questioning. However, this proof was denied by the Sheriff, his deputies, and the F. B. I. agent (*Anderson v. U. S.*, 124 F. 2d 58, at p. 67). Finally it was conceded that the petitioners' detention by State officers violated the statutes of Tennessee to the effect that "no person can be committed to prison for any criminal matter until examination thereof be first had before some magistrate".

A

Working Arrangement Between F. B. I. and Buffalo Police Between February 15, 1956 and January 10, 1957 in Investigation of M & T Bank Robbery.

Our present record reveals that the F. B. I. agents and local officers of the Buffalo Police Department were collaborating for months prior to petitioner's illegal arrest on January 10, 1957, in attempting to solve the M & T bank robbery (Tr. 112-113). Not only did the Federal Agent in Charge, Roche, testify that he and his agents co-operated in the investigation of the M & T bank robbery, but he also stated that the Federal agents and the local police worked the case mutually (Tr. 112). These admissions, on the trial, were so damaging to the Government's claim of lack of collaboration that it caused the Trial Judge to exclaim:

"The Court: What are you saying?" (Tr. 112).

Subsequent to the aforesaid query by the Trial Court, the following question was asked of and the answer made by Federal Agent Roche:

> "Q. What was the type of your contact then?
> A. If we had any information we wanted to work on mutually we would work with the detectives and we would assign a detective and an agent together to work it out" (Tr. 113).

There does not appear to be any doubt that when Agent Roche stated that the bureau of the Buffalo Police Department and his Federal agents worked the case *mutually*, he meant to convey to the Court that the Federal officers and the local police were interchanging and reciprocating on any and all information that was received by the Federal agents or the local police officers. Such an arrangement could spell out but one conclusion, namely, that there was a "working arrangement" between the Federal and local officers in the investigation of the M & T bank robbery. If there remained a scintilla of doubt as to such "working arrangement" between Federal and local officers, it surely must be eradicated when Agent Roche stated that in addition to working on information *mutually* "we would assign a detective and an agent to work it out" (Tr. 113). There is but one deduction to be drawn from the latter admission, namely, that by "we" he meant himself as agent in charge of the F. B. I., his agents, and the higher echelon of the Buffalo Police Department; that they, in collaboration with one another, assigned detectives and agents to work out the information received from their reciprocal understanding.

Further evidence of a "working arrangement" between Federal agents and local police is demonstrated in the testimony of John C. Golombeck, Chief of Detectives of the Buffalo Police Department. After stating that on

January 10, 1957 he had called Agent in Charge Roche to inform him of the arrest of petitioner and others, in answer to a question concerning courtesy and co-operation between his department and the F. B. I., he stated:

> "A. That's right. We work hand in hand with them and the Sheriff's office" (Tr. 102).

The Court's attention is directed to the fact that the foregoing not only substantiates the petitioner's contention as to the "working arrangement" between the F. B. I. and local police in relation to the M & T bank robbery investigation from February 16, 1956 to January 9, 1957, but, as will be seen, that such working arrangement continued on January 10, 1957 and the early morning of January 11, 1957.

B

The Working Arrangement Between the F. B. I. and Buffalo Police Was a Continuous Arrangement and Was Pursued Up To and Including January 10th and 11th, 1957.

It has been demonstrated that the F. B. I. were investigating the M & T bank robbery from February 15, 1956 to January 7, 1957 and that during such period there was a "working arrangement" with Buffalo police officers (Tr. 112-113).

On January 7, 1957 Federal Agent Roche contacted John Golombeck and gave to him certain information relative to an alleged robbery of one Paul ..... (Last name unknown). Golombeck informed Roche that he had a record of a hold-up of one Paul Redlinski. Roche then furnished the Chief of Detectives with photographs of petitioner and two others, and Redlinski identified the petitioner (Tr. 106, 107). Again on January 9, 1957, Federal Agent Roche contacted the Chief of Detectives and stated that he had

information that petitioner and two others contemplated a hold-up in East Buffalo, which was to occur on January 10, 1957 (Tr. 107).

In spite of the information forwarded by Roche to Golombeck on January 7, 1957 and the further proof that Redlinski had identified the petitioner's photograph, no arrest of petitioner was made by the local police for such alleged crime until 1:00 P. M. on January 11, 1957 (Tr. 80). The only arrest made of petitioner by Golombeck was on January 10, 1957 and such arrest was made on *suspicion* (Tr. 95), and the subsequent detention was on *suspicion* (Tr. 98).

The "working arrangement" between Federal and State officers, relative to the M & T bank robbery, was a continuing operation, conceived in early 1956 and was operative between January 7 and January 11, 1957. The Government, if it remains consistent with its contention in the Courts below, will concede that there was close collaboration between Federal and local officers in attempting to solve the M & T bank robbery. However, it asserts that such does not support a deduction that there was a "working arrangement" between the F. B. I. and local officers in detaining petitioner and interrogating him concerning his part in such crime. The answer to the Government's position is found in the record:

Between January 7th and 10th, 1957 the petitioner was not only a *suspect* relative to the M & T bank robbery and the Liberty Bank robbery, but this fact was transmitted to Mr. Dwyer, the State district attorney, by Federal Agent Roche (Tr. 108).

On January 10, 1957, after petitioner's arrest based upon information supplied by the F. B. I., but before he was taken to local police headquarters, Chief of Detectives

Golombeck telephoned Roche, at about 11:00 A. M. and informed the latter that he had arrested petitioner and two other persons and that they were on their way to headquarters (Tr. 108). We must bear in mind that the information given by the F. B. I. to Golombeck on January 9, 1957 did not concern itself with Federal matters and that Roche claimed he didn't ask the local police to do anything (Tr. 116). In spite of the lack of any request by Roche, the record not only shows that Roche was expecting a call from Golombeck on January 10, 1957 but that his expectation of such a call was based on "if anything had developed" (Tr. 115, 116). The sole and only developments that Roche was interested in were the arrest of petitioner, the locale of his detention and the opportunity to query the petitioner while in the custody of the local police. It does not seem plausible that he was interested in any violation of New York State law.

Upon receipt of the aforementioned telephone call from Golombeck, Agent Roche, interested only in bank robberies, went over to local police headquarters shortly before noon, at which time he saw Golombeck, District Attorney Dwyer and Lieutenant Klenk, the latter being one of the officers who arrested petitioner (Tr. 108, 109). The purpose of his visit was to learn whether or not anything had developed concerning the M & T bank robbery, the Liberty Bank robbery or the Seneca-Emslie branch of the Marine Trust. Roche conceded that his inquiries of Golombeck, Klenk and Dwyer were concerning bank stickups (Tr. 113-114). Such inquiries by a Federal officer of three "local" officers provides a substantial basis for the petitioner's contention that the local officers were to carry out the "working arrangement" and develop from petitioner, by interrogation, any facts relating to the bank robberies then

under investigation by the F. B. I. Further, another reason for the early visit of Roche to police headquarters was to confer as to the status of the petitioner at that time; the intentions of the local police as to the length of petitioner's detention, and the time when and the manner in which the questioning by the F. B. I. could be undertaken. In view of Rule 5a of the Federal Rules of Criminal Procedure, as well as Section 165 of the New York Criminal Code, the Federal agents knew that if they took custody of the petitioner it would be necessary to arraign him the same afternoon, whereas the local police enjoyed a more liberal application of the State provision. Such reasoning may be characterized as surmise or conjecture. It is submitted, however, that, excluding naiveness, the deduction drawn is amply supported by Roche's immediate appearance at local headquarters and the collaboration between Roche and the three "local" officers.

At this stage, Roche, the Federal agent, Chief of Detectives Goldmbeck, Lieutenant Harry Klenk (arresting officers of petitioner) and District Attorney Dwyer went to lunch together (Tr. 113); that this luncheon lasted until 2:30 P. M. when Roche, and at least Klenk and Dwyer, returned to local police headquarters where petitioner was being illegally detained (Tr. 114). At 2:30 P. M. Lieutenant Klenk, of the Buffalo Police, began interrogating the petitioner and among the subjects of such interrogation was questioning as to a bank hold-up in the North End and of the Market Bank out on Clinton Street (Tr. 84, 85)*. At 3:30 P. M. Roche and Dwyer, jointly, interrogated the petitioner about the M & T bank robbery, and other crimes, and endeavored to secure petitioner's consent to a search of his home (Tr. 109). Again it would strain credulity for

* The "Market Bank out on Clinton Street" had reference to the M & T Trust Company, the victim of the robbery of February 15, 1956.

an assertion to be made by the Government that the procedure to be followed as to detention and interrogation of the petitioner was not, at least in part, the subject of discussion at such luncheon. The only plausible reason for the luncheon, other than that heretofore expressed, would be one of sociability. Assuming that such an assertion were made, it would not follow that the future procedural aspects of the detention and interrogation of the petitioner were not discussed. The interrogation of the petitioner by Klenk, immediately after the return from lunch, on the subject of the M & T bank robbery, followed by further interrogation by Roche on the same subject-matter, in the presence of Dwyer, supports the petitioner's contention that the "working arrangement" between Federal and State officers was operating at such times.

Roche, a qualified agent in charge of the Buffalo office of the F. B. I., had certainly come into possession of information from local officers Golombeck and Klenk that the petitioner had committed no crime in their presence. He must have learned that petitioner was being held on suspicion. Added to such factors, it was known by Roche subsequent to his interrogation of petitioner that the business hours of the City Court of Buffalo, for arraignment of petitioner, had expired and petitioner was still being held illegally. There was no impediment to the plans which he put into effect by assigning Agents Eddy and Jenson at 8:00 P. M. to interview the petitioner (Tr. 15). The oral and written statement of petitioner was obtained from him as the result of interrogation by Federal Agents Eddy and Jenson between the hours of 9:00 P. M. on January 10, 1957 and 12:45 A. M. on January 11, 1957, during an illegal detention.

In addition to the close collaboration of local police and Federal Agent Roche throughout the daytime, a further

significant factor occurred during the hours of 9:00 P. M. on January 10, 1957 and 12:30 A. M. on January 11, 1957. During these hours petitioner, according to the Government's contention, was being detained solely by the "local" police. However, the actual custody of petitioner during the aforesaid hours was exclusively that of the Federal officers. In fact, it was so exclusive that Klenk, the local officer, during those hours went to local headquarters to interview petitioner. He endeavored on three (3) occasions to interrogate petitioner. Klenk's reaction on those occasions is best expressed in his own words:

> "* * * when I went upstairs as long as they were talking to them I wouldn't step in and tell them I wanted to talk to them" (Tr. 88).

Such conduct on the part of the "local" police certainly dispels the expression of the majority below:

> "The custody of the defendants after arrest was *exclusively* that of the Buffalo police, as well as their interrogation" (Tr. 290).

The petitioner submits that the development of the above facts demonstrates the existence of and the carrying out of a "working arrangement" between Federal and local officers and substantiates the application of the rationale expressed in *Anderson v. United States* at page 356:

> "* * * There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers. Gambino v. United States, 275 U. S. 310, 314, 48 S. Ct. 137, 72 L. Ed. 293, 52 A. L. R. 1381; Byars v. United States, 273 U. S. 28, 33, 34, 47 S. Ct. 248, 71 L. Ed. 520."

Although in *Lustig v. United States*, 338 U. S. 74, this Court concerned itself with the question of Federal par-

tic[illegible]ation in an unlawful search and seizure by State officers, the principle involved is the same and it is difficult to distinguish the facts in that case from those of the instant case.

In the *Lustig* case, Green, a Federal officer, contacted the Camden, New Jersey police department and imparted to them certain information as in the present case Roche contacted the Buffalo police officials. Green thereafter was notified by the police of the search and went to the hotel, whereas Roche was notified by the Buffalo police and went to police headquarters. Green did not request the search of the hotel room; nor did Roche verbally request the arrest of petitioner. However, after the inception of the search by state officers, Green joined in the same, as Roche joined the local police officers after the arrest and during the illegal detention. Both were participants in collaborating in an illegal enterprise, and evidence obtained under such circumstances is inadmissible.

In view of the facts as above outlined, and upon the authority of *Anderson v. United States* (see also *Lustig v. United States*), the determinations of the courts below should be reversed.

C

The Arrest of Petitioner on January 10, 1957 On Suspicion Was in Violation of the Statute of New York State and, Therefore, Illegal. Failure to Arraign Defendant on January 10, 1957 Violated the Statutory Law of New York.

Section 177 of the Code of Criminal Procedure (1) provides that a peace officer may arrest, without a warrant "for a crime committed or attempted in his presence, (2)

when the person arrested has committed a felony, although not in his presence, and (3) when a felony has been committed, and he has reasonable cause for believing the person to be arrested to have committed it."

Section 165 of the same Code provides that a defendant must in all cases be taken before a magistrate without unnecessary delay.

The record in this case indisputably shows that on January 10, 1957 the local police had no warrant for the petitioner's arrest (Tr. 97); that there was no crime committed in their presence; that the arrest was made on the basis of suspicion, and he was being held on suspicion (Tr. 95, 98).

The record further reveals that, although petitioner was taken into custody on January 10, 1957, between 9:30 and 9:45 o'clock A. M., no charge was placed against petitioner by the local police until 1:00 P. M. on January 11, 1957 and that petitioner was arraigned shortly after the charge was placed against him in the City Court of Buffalo on January 11, 1957 at 2:00 P. M. (Tr. 75-80).

There should be no question from the above that the arrest of the petitioner was illegal and the detention of the petitioner was also illegal, inasmuch as the City Court of Buffalo was in session throughout January 10, 1957 and no attempt was made to arraign petitioner until the following day. The wilful violation by the police of Section 165 of the New York Criminal Code, calling for prompt arraignment, is a crime. Penal Law, § 1841. Such violations have been sufficient cause for reversal of convictions in New York. *People v. Mummian*, 258 N. Y. 394; *People v. Lovello*, 1 N. Y. 2d 436, 154 N. Y. S. 2d 8.

In *People v. Lovello (supra)*, the defendant was arrested on a Saturday night and was not arraigned until the following Monday. The Court, after expressing its opinion that there was no dispute as to the sufficiency of the prosecution's proof, said at page 9 (Supp. edition):

> "He was not arraigned until Monday morning although to the knowledge of the officers a court in which he could have been arraigned was open on Sunday. The delay in arraignment was illegal."

POINT II

Even in the absence of a so-called "working arrangement" between the State and Federal officers, the oral and written statements (Government's Exhibit 43) taken from petitioner by agents of the Federal Bureau of Investigation while petitioner was being illegally detained without arraignment in violation of Section 165 of the New York State Code of Criminal Procedure, should not have been received in evidence against him, and in receiving it the Trial Court committed reversible error.

In Point I, above, we have endeavored to show that there was, in fact, a "working arrangement" between the local authorities and the local office of the Federal Bureau of Investigation as would bring the instant case squarely within the rule promulgated by this Court in the *McNabb* and *Anderson* cases and, therefore, make the admission in evidence of petitioner's "confessions" reversible error. We wish to go one step further. Assuming, for the sake of argument, that the record does not disclose facts pointing to the existence of such a "working arrangement", petitioner respectfully urges that the rule of the *McNabb* and *Anderson* cases should be extended to prevent Federal law enforcement officers from taking ad-

vantage of illegal detentions of suspected federal offenders by State officers in order to secure confessions which, if the illegal detention had been at their own hands, would be inadmissible in evidence. Such an extension of the *McNabb* and *Anderson* rule would seem to be consistent with the policies of this Court in the so-called "search and seizure cases", *viz*:

In *Weeks v. U. S.*, 232 U. S. 383; 34 S. Ct. 341, this Court held that evidence obtained by Federal officers as a result of illegal search and seizures would not be admitted against the defendant in Federal prosecutions. In arriving at this determination, the Court coincidentally found that unreasonable search and seizures by State officers did not come within the protection afforded by the Fourth Amendment to the United States Constitution.

Later, in *Byars v. U. S.*, 273 U. S. 28; 47 S. Ct. 248, the rule of the *Weeks* case was extended to provide that evidence obtained as a result of an unlawful search and seizure by State officers was inadmissible in Federal prosecutions if Federal officers had participated in the unlawful search and seizure to the point that it had become a joint State and Federal operation, or, in other words, if the Federal officers "had a hand in it." See *Lustig v. U. S.*, 338 U. S. 74; 69 S. Ct. 1372. For many years thereafter our Federal District Courts operated under the rule that illegally obtained evidence by State officers was admissible in Federal trials provided Federal officers did not "have a hand" in its acquisition.

But then in *Wolf v. Colorado*, 338 U. S. 25; 69 S. Ct. 1359, this Court decided that so much of the *Weeks* case as held that illegal search and seizures by State officers did not offend the Fourth Amendment demanded recon-

sideration. A majority of the Court held that henceforth an invasion of a person's Constitutional rights by State officers would be considered in the same light as though committed by Federal officers, in so far as Federal prosecutions are concerned.

We then come to *Elkins v. U. S.*, 364 U. S. 206; 80 S. Ct. 1437, in which this Court for the first time expressly declared that the so-called "silver platter" doctrine referred to in the *Lustig* case was no longer acceptable. It held that since evidence obtained by State officers as a result of an illegal search and seizure constituted an invasion of a defendant's Constitutional rights, such evidence was no longer admissible in Federal prosecutions despite the fact that there had been no participation in such illegal search and siezure by Federal officers.

True, the *Weeks, Byars, Wolf* and *Elkins* cases dealt with illegal search and seizures and not confessions obtained during illegal detentions such as the case at bar. Nevertheless they exhibit a policy, we think, which frowns upon lawless law enforcement and have their counterparts in cases dealing with illegally obtained confessions.

For instance, the *Weeks* case has its counterpart in *McNabb v. U. S.*, 318 U. S. 332; 63 S. Ct. 608, which held that confessions obtained by Federal officers during the illegal detention of a defendant in violation of Rule 5a of the Federal Rules of Criminal Procedure, were inadmissible in Federal prosecutions.

The *McNabb* rule, like the *Weeks* rule, was extended in *Anderson v. U. S.*, 318 U. S. 350; 63 S. Ct. 599, which is the counterpart of the *Byars* case. In the *Anderson* case, this Court held that confessions obtained by Federal officers while a defendant was being illegally held without

arraignment by State officers under a working arrangement with Federal officers, were inadmissible in Federal prosecutions.

Unless the *McNabb* rule is extended to the point that the *Weeks* rule was in the *Elkins* case, over-zealous Federal law enforcement officers can still circumvent the mandate of Congress as it is embodied in Rule 5a and the principles set forth in the *McNabb* and *Anderson* cases, by the simple device used in the instant case of alerting the local authorities to some supposed past or contemplated violation of the State law and then reaping the benefits provided by the State officials' apprehension and detention of the suspect. No clearer case of circumvention can be imagined than the instant one.

As outlined in Point I above, we have the admission of John A. Roche, the Special Agent in charge of the local office of the Federal Bureau of Investigation, that petitioner had been a suspect in both bank hold-ups for many months prior to his apprehension by the Buffalo police on January 10, 1957; that on January 7, 1957 he contacted Buffalo Chief of Detectives Golombeck and informed him of Coppola's part in the hold-up on January 4, 1957. On January 9, 1957 Roche again called Golombeck and told him of information in his possession indicating that Coppola planned a hold-up of a local tavern on January 10, 1957 at about 10:00 A. M.

On January 10, 1957, at about 11:00 A. M., Golombeck called Roche and told Roche that he had Coppola in custody and was on his way to police headquarters. Roche testified that he went to police headquarters shortly before noon on January 10, 1957 and that he questioned Coppola about the M & T bank robbery, and asked permission to

search his home; that he later assigned two agents to question Coppola later that evening. Roche also admitted that he had informed Erie County District Attorney John Dwyer of Coppola's suspected participation in the bank hold-ups on January 9, 1957 and that Dwyer was with him on the afternoon of January 10, 1957 when he questioned Coppola in police headquarters (Tr. 106-110). As was pointed out before, Coppola's oral and written confessions (Government's Exhibit 43) were obtained while he was being illegally detained following an unlawful arrest (Point I, sub. "C").

Considering the circumstances set forth above, it requires no stretch of the imagination to see just what tactics were used by the Government's agents to circumvent the mandates of Rule 5a. Realizing that any confession obtained during an illegal detention of petitioner by themselves or through a working arrangement with the local police would be inadmissible in a Federal prosecution, the Government agent bided his time until he could give the local police what the local police considered sufficient excuse to apprehend and detain petitioner on suspicion. Then, while the local authorities obligingly detained petitioner in violation of his rights, the agents of the F. B. I. pounced upon the situation that they had at least indirectly created to question petitioner and secure a confession from him. Such circumvention of the Federal rules should not be condoned or tolerated.

It makes no difference to a defendant whether he is being illegally detained in violation of his rights by local or Federal authorities. This Court has rejected confessions obtained from a defendant while he is being illegally detained by Federal officers themselves (*McNabb v. U. S., supra*) or by local authorities in co-operation with Federal au-

thorities (*Anderson v. U. S., supra*). There seems to be no good reason why a distinction should not be made between confessions obtained under those circumstances and one obtained by Federal agents while a defendant is being illegally detained in the technical custody of State officers under circumstances which don't quite show the existence of a so-called working arrangement between local and Federal officials. This seems particularly true where, as here, it clearly appears that the Federal authorities are at least indirectly responsible for the petitioner's initial apprehension by the local police.

It is hard to conceive why the absence of a "working arrangement" between local and Federal authorities should make a defendant's detention any less illegal or his confession any less tainted by his illegal detention. The absence of participation by Federal authorities in petitioner's illegal detention does not change the net result any more than the non-participation by Federal authorities in the illegal search and seizures changed the net result in the *Elkins* case, *i.e.*, in both cases evidence which had been obtained in violation of the defendant's rights had been used to convict him.

It is true that the *Elkins* case involved a violation of a Constitutional right and the instant case involves a violation of a statutory right. But fair play in the prosecution of Federal criminal cases recognizes no such distinction. This is evidenced by the decisions of this Court in the *McNabb* and *Anderson* cases. If the contrary were true, this Court might well have decided in those cases that an illegal detention, by and of itself, was no reason for throwing out a confession but merely a factor to be considered in determining whether or not a confession was coerced.

But as we know, this Court decided otherwise and thereby established the rule that fair play dictates that confessions obtained during an illegal detention of a defendant will not be received in Federal prosecutions for that reason alone and even in the absence of coercion. Unless the *McNabb* and *Anderson* cases are extended to hold that confessions obtained by Federal officers while a defendant is being illegally detained by local police are inadmissible in Federal prosecutions, the very principle behind those cases will be defeated. This is true because it will leave available to over-anxious Federal law enforcement agents a device whereby they can circumvent the clear mandate of Congress as embodied in Rule 5a and the principle behind those decisions of this Court.

No one can seriously argue that Agent Roche did not have a duty to inform the local police of information in his possession indicating that petitioner and others had planned a hold-up to be staged on the morning of January 10, 1957, for indeed he did. However, this does not negative the fact that Agent Roche might well have had, as we believe he did, a second less meritorious motive in imparting the information to Chief Golombeck, *viz.*: the creation of the circumstance whereby the petitioner would be apprehended and detained by local authorities on their own business and thus affording to Roche the opportunity to question petitioner under circumstances which did not carry with them the stigma of a "working arrangement".

But Roche's declared motive in advising the local police of the anticipated hold-up by petitioner is not the determining factor. The vice lies in the fact that Roche used the unlawful detention of petitioner by the local authorities as a means of securing a confession from petitioner which would have been useless to him if the detention had been

his or accomplished with his co-operation. The device used is obvious and should not be permitted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of the Courts below should be reversed and new trials ordered.

Respectfully submitted,

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No. 153

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK R. COPPOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 153

FRANK R. COPPOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The writ in this case covers two judgments, petitioner having been convicted at separate trials of two robberies (Court of Appeals Docket No. 25177, involving robbery of the Manufacturers and Traders Trust Company; Court of Appeals Docket No. 25257, involving robbery of the Liberty Bank of Buffalo). The majority and dissenting opinions of the court of appeals, sitting *en banc*, in the first of these cases (R. 284–307)[1] are reported at 281 F. 2d 340. The majority and dissenting opinions of the *en banc* court

[1] "R." refers to the printed record in this Court, containing excerpts from the proceedings in both cases. "No. 25177, Tr." refers to the reporter's transcript in case No. 25177; "No. 25257, Tr.", to the reporter's transcript in case No. 25257.

in the second case (R. 319–320) are reported at 281 F. 2d 360.[2]

JURISDICTION

The judgments of the court of appeals were entered on May 20, 1960 (R. 308, 322). The petition for a writ of certiorari was filed on June 17, 1960, and was granted on October 10, 1960 (R. 323; 364 U.S. 813). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Petitioner voluntarily gave federal officers a confession of federal offenses while they were questioning him with the permission of city police officers who were holding him in apparent violation of a state statute requiring the arraignment of arrested persons without delay. The questions presented are:

1. Whether the confessions were inadmissible at petitioner's federal trials under the principle of *Anderson* v. *United States*, 318 U.S. 350—in which the exclusionary rule of the *McNabb* case, 318 U.S. 332, was applied to confessions made to federal officers by persons in illegal state custody, where the evidence established that the illegal custody was the product of a "working agreement" between, and collaboration by, the federal and state officers.

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[2] The *en banc* court, in each case, overturned an earlier decision of a three-judge panel (which had divided two to one), vacated the panel's judgment, and withdrew its opinion (R. 307, 321). The original majority and dissenting opinions in the Manufacturers and Traders Trust Company case appear at R. 267–280. The original majority and dissenting opinions in the Liberty Bank case appear at R. 310–311, 318.

2. Whether the confessions were inadmissible solely because petitioner was in illegal local custody at the time, irrespective of any "working agreement" or collaboration on the part of the federal and city officers of the sort involved in the *Anderson* case.[3]

STATEMENT

On February 4, 1957, two indictments (R. 1–2, 179–182) were returned in the United States District Court for the Western District of New York charging petitioner and others with the robbery of two federally-insured Buffalo banks, in violation of 18 U.S.C. 2113(a). One indictment (R. 1–2) charged petitioner and Dario D'Antuono with robbing a branch bank of the Manufacturers and Traders Trust Company. The other (R. 179–182) charged D'Antuono, Joseph Simmons, Carmelo Giambra and James Millio with robbing a branch of the Liberty Bank of Buffalo, and charged petitioner with having aided, abetted and procured the commission of that offense. Following separate jury trials (R. 3–175, 182–265), presided over by two different judges, petitioner was found guilty under both indictments[4] and was sen-

[3] While the second of these questions was not raised by the petition for certiorari, it was involved in one of the alternative bases of the dissent in the court of appeals (R. 301–302) and is raised and argued by petitioner in his brief on the merits (Br. 2, 26–33).

[4] D'Antuono pleaded guilty to the Liberty Bank indictment (No. 25257, Tr. 413) and testified for the government at the trial of that case (No. 25257, Tr. 322–413). He also testified for the government at the M. & T. trial (No. 25177, Tr. 300–338), acknowledging in his testimony his own guilt, though it appears he had not formally changed his plea of not guilty

tenced to 20 years' imprisonment on each, the terms to run consecutively (R. 177–178, 266–267).

The evidence adduced against petitioner at the respective trials may be summarized as follows:

The M. & T. Bank case: On February 15, 1956, two masked men held up and robbed the Clinton-Bailey Branch of the Manufacturers and Traders Trust Company (the "M. & T. Bank") (R. 4–5). The Federal Bureau of Investigation had the robbery under investigation from the time of its occurrence (No. 25177, Tr. 55–56). Petitioner was a prime suspect as early as February 20, 1956 (No. 25177, Tr. 149–168, 213; R. 5–6). On November 5, 1956, petitioner told William Buyers, a cousin by marriage, that petitioner and a "partner" (whom he subsequently identified as D'Antuono) had "pulled the M. & T. bank job", and he proposed to Buyers that the latter be his "finger" man in future robberies which he planned to commit (R. 7–9). In five subsequent conversations between then and January 5, 1957, petitioner related to Buyers further details of the M. & T. robbery (R. 9–12). Unknown

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to guilty as of the time of testifying (No. 25177, Tr. 363). Giambra also pleaded guilty to the Liberty Bank indictment (No. 25257, Tr. 684). Simmons and Millio were tried jointly with petitioner in the Liberty Bank case, and were also convicted (R. 256, 265). Their convictions (in which the issues now before this Court were not involved) were affirmed by the three-judge panel which originally reversed petitioner's convictions (R. 311–317, 318–319), and were not involved in the subsequent *en banc* proceedings.

to petitioner, Buyers was making regular reports of these matters to the F.B.I. (R. 12, 140–143).[5]

D'Antuono, testifying as a witness for the government, gave a detailed account of his and petitioner's perpetration of the robbery (No. 25177, Tr. 303–337).

Robert Eddy, an F.B.I. agent, following a hearing out of the presence of the jury as to its admissibility (R. 14–122; see *infra*, pp. 7–28), was then permitted to testify to the making by petitioner, to him and another F.B.I. agent, Omar Jenson, while petitioner was in the custody of the Buffalo city police, of a detailed confession of his part in the robbery (R. 124–133).

The Liberty Bank case: On October 2, 1956, three men held up and robbed the Linwood Branch of the Liberty Bank of Buffalo (No. 25257, Tr. 9–47, 80–86, 172–177, 267–270). Buyers testified that petitioner, in his conversation with him of November 5, 1956 (see *supra*), acknowledged having instigated the commission of this crime by associates as part of a plan to throw the F.B.I., which suspected him of being implicated in the M. & T. offense, off the trail (R. 183; No. 25257, Tr. 548–550).

D'Antuono, again testifying for the government, gave a detailed account of the Liberty Bank robbery (No. 25257, Tr. 324–341). He testified that the offense

[5] The F.B.I. was in "daily contact" with Buyers from November 5, 1956, to January 10, 1957 (the day on which petitioner was arrested by the Buffalo police, see *infra*) (R. 142).

was instigated by petitioner and executed by himself, Simmons, Giambra, and Millio, the last-mentioned of whom remained outside the bank at the wheel of the getaway car (No. 25257, Tr. 324–337, 383–386).

Agent Eddy—again following a hearing out of the presence of the jury as to its admissibility (R. 187–238; *infra*, pp. 7–28)—then testified to a detailed confession by petitioner of his role in the Liberty Bank robbery, made to him and agent Jenson (as in the case of his M. & T. confession, and on the same occasion) while he was in the custody of the Buffalo police (R. 239–244).

On appeal to the Court of Appeals for the Second Circuit, a three-judge panel of that court (one judge dissenting)[6] reversed both convictions on the ground that petitioner's confessions had been improperly received in evidence under the rule of *Anderson* v. *United States*, 318 U.S. 350, in which this Court applied the rule and rationale of *McNabb* v. *United States*, 318 U.S. 332, to the factual situation there involved (R. 267–281, 309–311, 318–319). On motion of the government, a rehearing *en banc* was ordered (R. 281–283), and, on May 20, 1960, the *en banc* court, dividing three to two,[7] sustained the convictions (R. 284–308, 319–322).

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[6] The majority consisted of Judges Waterman and Washington (the latter, a regular member of the Court of Appeals for the District of Columbia Circuit, sitting by designation). Judge Moore dissented.

[7] Judge Moore wrote the majority opinion, in which Chief Judge Lumbard and Judge Friendly concurred. Judges Waterman and Clark dissented.

The confessions involved—an oral and a written confession in the M. & T. case (R. 124–133) and an oral confession in the Liberty Bank case (R. 239–244)—were made in the course of a single interview. Both cases, accordingly, present the same issues. The relevant facts were in each case, as we have noted, established at a hearing out of the presence of the jury (R. 14–122, 187–238), and they were and are essentially undisputed.* With one principal

*The hearing in each case had as its purpose the taking of evidence on the question (no longer involved) of the voluntary or involuntary character of the confession as well as on the issue (now before the Court) of whether the confession was excludable under the rule of the *McNabb* case as applied in *Anderson* v. *United States*, 318 U.S. 350. (For purposes of expedition, and at petitioner's counsel's suggestion, the evidence on both issues was adduced in each case at a single hearing (see R. 13, 22, 116–122, 186, 196, 223, 235–238).) Unlike the evidence on the *McNabb-Anderson* issue, the evidence on the issue of voluntariness was sharply disputed. For example, petitioner testified at the M. & T. hearing that his confession—made to F.B.I. agents Eddy and Jenson on the evening of January 10, 1957—was made at a time when he was suffering from hunger as a result of having been deprived of food (except for a sandwich which he found inedible) by the Buffalo police since his arrest at about 9:30 that morning (R. 51, 53–54, 56, 61–62, 67–68); that he was denied permission by the agents (as well as others to whom he spoke at police headquarters during the day) to call a lawyer (R. 52–53, 60, 66); and that the agents prevailed on him to confess by telling him that his wife and mother were in custody and that, if he would confess, they would use their influence to see that the case against them was dropped (R. 57, 58–60). (Petitioner repeated at the Liberty Bank hearing his testimony about being deprived of food (R. 235), but none of the other details.) The agents, on the other hand, testified that petitioner made no complaints to them regarding food, or complaints of any kind (R. 27, 31, 43, 44, 46, 206); that his only requests—for water and cigarettes—were complied with (R. 34, 44, 204;

exception, to be noted (see *infra*, pp. 9–15, including fn. 9, p. 9), the evidence adduced at the two hearings went over essentially the same ground and established substantially the same facts. In some instances, on the other hand, details of significance were developed at one hearing which were not developed at the other. There is no necessity, however, we think, for setting forth separately—in statements which would necessarily largely duplicate each other—the facts as adduced at the respective hearings. Instead, we present a composite statement of the facts as developed at both hearings, keying our record references (in general) to both, and noting as we go along which of the details were developed at one hearing only.

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see also R. 58, 59, 61, 68, 72, 202); that he did not appear tired, nervous, or afraid (R. 31, 43, 45); that they advised him of his rights, including the right to consult an attorney before speaking to them and to refrain from speaking to them at all (R. 22, 27, 31, 35, 36, 43, 201); that they did not tell him that his wife or mother was in custody, and made no promises to him of any kind (R. 23, 27, 40, 41, 45, 48, 49, 207); and that he talked very freely, volunteering matters in some instances (R. 33, 44, 206). Though petitioner repeated none of his testimony in either case in the presence of the jury (in neither case did he take the witness stand at the trial proper, see R. 170, 262–263), the judge in each case, in his instructions to the jury, left it to them to decide, as a factual matter, whether the confession was voluntary or involuntary, and to accept or reject it accordingly (R. 169–170, 172–173, 259, 262).

1. *Petitioner's arrest and the circumstances leading to it*[9]

On January 7, 1957, John Roche, special agent in charge of the Buffalo office of the F.B.I., asked John Golombeck, Chief of Detectives of the Buffalo Police Department, whether the Buffalo police had any record of the robbery, on the night of January 4, 1957, of a Buffalo butcher whose first name was Paul and whose last name was unknown; Roche explained to Golombeck that the F.B.I. had received information that a person of this description had been robbed on that night by petitioner and two other men, named D'Antuono and Simmons.[10] Golombeck told Roche

[9] The facts set forth under this caption (aside from the bare fact of petitioner's arrest by the Buffalo police on the morning of January 10, 1957, at a time when petitioner was committing no crime (see R. 208, 217)) were adduced at the M. & T. hearing only. For the reasons why they were not adduced in the Liberty Bank case (notwithstanding government counsel's attempts to do so), see *infra*, pp. 15–17.

[10] While the record does not clearly establish the fact, it is inferable that this information (as well as that referred to in the following paragraph) was received by the F.B.I. from its informant Buyers (see *supra*, pp. 4–5). As appears from Buyers' testimony before the juries in these cases, petitioner, commencing with his conversation with Buyers of November 5, 1956 (in which he disclosed his involvement in both the M. & T. and the Liberty Bank robberies), had been periodically confiding to Buyers—during the remainder of November,

that the police did have a record of such a robbery, and that the victim's name was Paul Redlinski. Roche then furnished Golombeck with photographs of petitioner and his two associates, and, on the following day, Redlinski identified petitioner, from his photograph, as one of the persons who held him up. (R. 93–94, 100, 106–107.)

On January 9, 1957, Roche informed Golombeck that the F.B.I. had received information that petitioner, D'Antuono, and Simmons were contemplating the commission of another robbery at 10 o'clock on the following morning, and that it was possible that the place which they were planning to rob was the El Chico Tavern on Clinton Street (R. 107). Such a crime, if committed, would have been within the exclusive jurisdiction of the Buffalo Police Department and the authorities of the State of New York; the F.B.I. would have had no official concern with the offense (R. 82).

Roche also gave this information to a New York State official, John Dwyer, the District Attorney of Erie County (R. 108). Roche testified as follows

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throughout December, and during the early part of January—various details not only of those robberies but also of future criminal actions which he and his associates were contemplating (R. 7–12, 183–184; No. 25177, Tr. 242–269; No. 25257, Tr. 544–558). One of the conversations related by Buyers occurred on January 5, 1957—the day following the robbery of the butcher referred to in the text—when, according to Buyers, petitioner had "quite a bit of money in front of him" which he was "counting and sorting" (No. 25177, Tr. 263). As has been noted (fn. 5, *supra*, p. 5), the F.B.I. was in "daily contact" with Buyers between November 5, 1956, and January 10, 1957 (R. 142).

concerning his reason for giving Dwyer this information (*ibid.*):

> I informed Mr. Dwyer that in view of the information we had received of a contemplated hold-up in the City of Buffalo the following morning that we felt obligated to furnish him with this information so that he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up.

Roche further told Dwyer that the F.B.I. had been investigating petitioner in connection with the M. & T. Bank robbery, the Liberty Bank robbery,[11] and the "contemplated" robbery of a third Buffalo bank, the "Marine Trust at Seneca and Emslie"[12] (R. 108).

On the following morning, January 10, 1957, officers of the Buffalo Police Department were detailed by Golombeck to a number of taverns in the area in which it was thought the planned holdup might take place (R. 93, 94). Golombeck, together with Lieutenant Harry Klenk and another Buffalo police officer, stationed themselves in an automobile in the vicinity of Clinton and Babcock Streets, near which the El Chico Tavern was located (R. 75–76, 93, 108). At about 9:30 or 9:45 the three officers saw a car in which petitioner, D'Antuono, and Simmons were

[11] The M. & T. and Liberty Bank robberies—constituting as they did state as well as federal offenses—were matters of official concern to Dwyer as well as to the federal authorities (see *infra*, pp. 62–63).

[12] Petitioner had told Buyers that he was planning to rob a bank located at Seneca and Emslie Streets (R. 9–10; No. 25177, Tr. 260).

riding (R. 50, 75–76, 93, 95). With drawn weapons the officers overtook petitioner and his companions, ordered them to pull over, and (either immediately or within a short while thereafter[13]) took them into custody (R. 50, 76–77, 80–81, 95, 108, 113, 208, 217).

The apprehended individuals were committing no crime at the time (R. 76, 95, 208) and the officers had no warrant for their arrest (R. 80). The officers asked them "[w]hat they were going to do" and "what was in the automobile that they were riding in" (R. 84). It does not appear what answers, if any, were given to these questions. As a result either of a search of the car by the officers or disclosure by its occupants (it does not appear which), the officers found beneath the driver's seat a number of articles among which was "a paper bag with a couple of silk stockings in it" (R. 91).[14] Klenk, asked at the hearing if he informed petitioner that he was under arrest, said: "Well, we didn't use the exact word 'arrest.' We said, 'We are going to take you down to headquarters for questioning'" (R. 77). At another point in his testimony Klenk stated that petitioner

[13] It is not clear whether the actual apprehension of the men (as distinguished from stopping them for purposes of inquiry) occurred immediately following the stopping of the car or subsequent to the officers' interrogation of the men and the discovery of certain suspicious articles under the driver's seat (see *infra*).

[14] Masks made of women's stockings were worn by both the robbers who held up the M. & T. Bank (R. 125) and by two of the perpetrators of the Liberty Bank holdup (No. 25257, Tr. 270, 378, 383–384). Whether this was known by the officers who stopped petitioner's and his companions' car does not, however, appear.

and his companions "were taken downtown for further investigation * * * as to what they had with them in their possession" (R. 91). Although Klenk, in reply to a leading question by petitioner's counsel, testified that the officers "arrested [petitioner] on suspicion" (R. 80–81, 208) it appears from the testimony of Golombeck (who was Klenk's superior, see R. 90) that, at least as to petitioner, Golombeck was effecting an arrest without warrant—as authorized by New York law—on the basis of probable cause for the belief that the person arrested had committed a felony, namely, the Redlinski robbery (see *supra*). Thus, Golombeck testified that he knew at the time of petitioner's apprehension that petitioner had been identified by Redlinski, through a photograph, as one of the persons who robbed him (R. 97, 100); and upon being asked by government counsel whether "as a police officer [he was] familiar with the fact that [he could] make an arrest without a warrant where a felony has been committed," replied, "That's right" (R. 100).[15]

The decision to apprehend the three men was solely that of the local police officers (R. 82, 101). No F.B.I. agent was present, and no agent had requested such action (R. 101, 116).

[15] Under New York law, a peace officer may arrest without a warrant when (among other occasions) a felony has been committed (or the officer has reasonable cause so to believe) and the officer has reasonable cause to believe that the person arrested committed it. Code of Criminal Procedure, § 177. (Robbery is, of course, a felony in New York. Penal Law, §§ 2, 2124–2129, 2183.)

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At about 11 a.m. or shortly thereafter, Golombeck telephoned F.B.I. agent Roche and told him that he and other officers had arrested petitioner, D'Antuono, and Simmons in the vicinity of the El Chico, and that they were then on their way to police headquarters with them (R. 108, 113).[16] Roche, asked at the hearing if he was "expecting a call from Golombeck at the time [he] got it," said that he was "not necessarily" expecting such a call, but that he "thought" Golombeck would call "if anything had developed" (R. 115–116). Golombeck testified that he made this call "[t]o let [Roche] know I apprehended the three," as "a courtesy extended to [Roche] for supplying me with the information" (R. 102).

On cross-examination by counsel for petitioner, Roche acknowledged that the F.B.I. and the local authorities had cooperated closely with each other in their attempts to solve the M. & T. robbery (R. 112–113).[17] "[W]e worked very closely with the detective bureau of the Buffalo police department," Roche testified, "and we worked the case mutually" (R. 112). "If we had any information we wanted to work on mutually," he further explained, "we would work with the detectives and we would assign a detective and an agent together to work it out" (R. 113). Golombeck, similarly, testified that "courtesy

[16] Golombeck's recollection was that he called Roche some time after the officers' arrival at the police station. However, he could not recall the exact time of the call. (R. 95, 96.)

[17] Presumably the same was true with respect to the Liberty Bank robbery. The subject was not inquired about at the Liberty Bank hearing, however, and there is no testimony on the point.

and cooperation" marked the relations between the Buffalo police and the F.B.I.; that the police "work[ed] hand in hand with [the F.B.I.] and the Sheriff's office" (R. 102). The F.B.I., however, at no time either gave "directions" to, or made requests of, the Buffalo Police Department in connection with their respective investigations of the case (R. 113).

2. *Petitioner's counsel's disavowal in the Liberty Bank case of any claim that petitioner was arrested "at the behest of the F.B.I."*

As we have noted (see fn. 9, *supra*, p. 9), except for the bare fact of petitioner's arrest by the Buffalo police on the morning of January 10 at a time when petitioner was committing no crime (see R. 208, 217), the facts thus far related were adduced in the M. & T. case only. Attempts by government counsel in the Liberty Bank case to establish the circumstances which led to petitioner's arrest, and to show that "the arrest was the independent act of the Buffalo Police Department, and they were not acting for the F.B.I." (R. 218), were blocked by repeated objections by petitioner's counsel that any such evidence would be irrelevant, for the reason that counsel did not claim that the arrest was made "at the behest of the F.B.I." (R. 218, 230), and by rulings by the court sustaining counsel's objections. The circumstances of these objections and rulings were as follows:

a. Government counsel, during the examination of Lieutenant Klenk, asked the witness whether, at the time of petitioner's arrest, he had "certain information which caused [him] to make the arrest" (R. 217).

Counsel for petitioner objected on the ground that any information the witness might have had would be irrelevant, and the objection was sustained (*ibid.*). The following then occurred (R. 218):

> MR. BROUGHTON [government counsel]: Just a moment, your Honor. I want to be heard on that matter before the ruling. First of all the contention of Mr. Mahoney is, as I understand it, that the Buffalo Police arrested Frank Coppola at the behest of the Federal Bureau of Investigation.
>
> MR. MAHONEY [counsel for petitioner]: I never asserted that.
>
> MR. BROUGHTON: I am entitled to show that the arrest made of the defendant Coppola was made with respect to [information] concerning a state charge and show the arrest was the indendent act of the Buffalo Police Department, and they were not acting for the F.B.I.
>
> THE COURT: I don't see you need that. * * *

Following further colloquy, government counsel again attempted to establish through the witness (Klenk) that the arrest was occasioned by information which he had received, and that the information "dealt with the commission of an offense against the Penal Laws of the State of New York" (R. 218). Petitioner's counsel again objected, and the objection was again sustained (*ibid.*).

b. Later in the hearing, following testimony by agent Roche that in January 1957 he had a conversation "with some local authorities in the City of Buffalo with respect to the defendant Coppola and

others," government counsel asked the witness whether the conversation was not "with respect to a matter not within [his] jurisdiction" (R. 229). Counsel for petitioner objected on the ground, among others, that the answer would be "hearsay" (*ibid.*). The following then occurred (R. 230):

> MR. BROUGHTON: He has raised the issue of whether or not the Buffalo Police Department arrested this man at the behest of the F.B.I. Now when the Government seeks to introduce in evidence from the very witness that would make such arrangement, if it existed, we are met with an objection it is hearsay.
>
> MR. MAHONEY: I want to meet that head on, because I think you certainly have within your grasp the fact I do not claim that the Buffalo Police made an arrest at the behest of the F.B.I.
>
> THE COURT: I have no such recollection.
>
> MR. MAHONEY: He just said to you that is the justification for the question.
>
> THE COURT: I will sustain your objection.
>
> MR. BROUGHTON: With that on the record I have no further questions.

c. Again, during oral argument before the district court, government counsel, evidently to make certain that he had not misunderstood the nature of the disavowal by petitioner's counsel, stated that he "understood" that counsel was making no claim that "the arrest was made by the local authorities at the behest of the F.B.I." (R. 238). Counsel acknowledged that that was "the substance of" his statement (*ibid.*).

3. *Petitioner's detention by the Buffalo police; the events of the afternoon of January 10*

Petitioner and his two companions were taken by the arresting officers to the headquarters of the Buffalo police, where they arrived at approximately 11 a.m. (R. 50–51, 77–78, 90, 95, 98, 108). At their arrival a "big turmoil" was going on, resulting from the presence of a large number of newspapermen, photographers, and television cameramen in all of the hallways of the building with the exception of the fourth floor, where the cell block was located (R. 51, 90, 96, 208, 221). To "circumvent the [p]ress and the photographers," petitioner and his associates were not immediately "booked"[18]—as was the usual custom when arrested persons were brought into headquarters—but were taken directly by the elevator to the cell block, where they were placed in the custody of the cell block guard (R. 51, 77, 89–90, 95–96, 208–209, 220–221).

Shortly before noon, following the receipt of Golombeck's telephone call, agent Roche proceeded to the Buffalo police headquarters "to ascertain * * * whether or not anything had occurred relative to"

[18] "Booking" was explained as the process whereby the name and address of an arrested person were registered on a "blotter" kept for that purpose in the detective bureau (located on the third floor of the headquarters building), together with other personal information about the person, the time of arrest, the charge on which he was held (*i.e.*, "the reason why the Police Department * * * is holding" him pending the filing of a "formal complaint" or "Information" with a local court or magistrate), the name of the arresting officer, and the "final disposition" of the matter (R. 83–84, 210, 218–219, 220–221).

the bank robberies which the F.B.I. had under investigation (R. 108, 113–114). At headquarters, Roche saw Golombeck, Klenk and Dwyer, and was informed that petitioner and his companions "hadn't been questioned up to that moment" (R. 109, 114). Roche, Golombeck, Klenk and Dwyer then went to lunch together, following which, at about 2:30 p.m., Roche returned to the police station (R. 113, 114).[19]

For approximately an hour or an hour and a half, commencing around 2 p.m., Klenk saw "some F.B.I. men" in the detective bureau of the headquarters building (R. 78, 210). They did not question petitioner in Klenk's presence, and Klenk did not know whether their business there had to do with petitioner (R. 210).[20]

Commencing at about 2:30, petitioner was interrogated by a number of state and local officers concerning his connection with various offenses within their jurisdiction, including the Redlinski robbery, the burglary of the premises of one Sidell, the robbery of an individual in Niagara Falls (not more specifically identified), and the two bank robberies involved in these cases[21] (R. 64, 65, 84–85, 95, 109,

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[19] The facts stated in this paragraph were adduced in the M. & T. case only.

[20] The only F.B.I. agent whose presence at headquarters on the afternoon of January 10 otherwise appears from the record was agent Roche (see *supra*, pp. 18–19, and *infra*, pp. 20–22).

[21] Lieutenant Klenk testified that he interrogated petitioner concerning, among other crimes, "[t]he bank holdup at North End * * * and the holdup of the Market Bank out on Clinton Street" (R. 85). We have been informed by the United

209). Among the state and local officers who interrogated petitioner were members of the Buffalo Police Department (including Lieutenant Klenk and Chief Golombeck), officers of the Bureau of Criminal Investigation of the New York State Police, and the local (Erie County) District Attorney's office (including Mr. Dwyer, the District Attorney) (R. 51–52, 54–55, 64–65, 77, 79–80, 84–85, 95, 109, 209, 210, 219–220). In addition, petitioner appeared in two "show-ups" or "line-ups" conducted by the Buffalo police, to which the victims of various local crimes were invited to see if they could identify him as the person, or one of the persons, who perpetrated the crimes (R. 51, 55, 77, 98).

At about 3:30 p.m., Roche and Dwyer spoke to petitioner in a joint interview (R. 54, 109). Dwyer explained to petitioner who he was and who Roche was, told petitioner he was interested in him in connection with "a series of various crimes," and proceeded to question him about the Redlinski holdup (R. 109). After the conversation between Dwyer and petitioner had gone on for some time, Roche, according to the latter's testimony, "interjected and asked [petitioner] about the M. & T. bank robbery" (R. 109, 114). In connection with that robbery, Roche asked petitioner if he had any objection to the F.B.I.'s searching his home in Niagara Falls. Petitioner said he did not. Roche then explained to

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States Attorney that the banks referred to were the banks involved in these cases. Those robberies, as has been noted, constituted state as well as federal offenses.

petitioner that the F.B.I. had a form known as a "permit to search" and asked if petitioner had any objection to signing such a form. Petitioner said he did not. Roche then left Dwyer and petitioner and telephoned his office to request that one of the forms be sent him. When the form arrived, Roche took it to petitioner, who then declined to sign it, stating that he preferred that his home not be searched. (R. 109, 114–115.)

According to petitioner, Dwyer and Roche, in this interview, "asked me to come clean, they got me cold and I might as well look for the best way out" (R. 54). Petitioner was sitting between them, he said, and both were asking him questions (*ibid.*). Asked how long he was in the conference room with Dwyer and Roche, petitioner replied that "it was quite a while because I remember Mr. Dwyer was trying to hammer it in my head [that] if I signed a statement we could get some sort of a deal and be tried as a first offender and have all these crimes wrapped up in one, and I told them I wouldn't make no deal" (R. 54–55). "When Mr. Dwyer questioned me in front of Mr. Roche," petitioner further testified, "it was on the M. & T. Bank" (R. 64). Asked if "several other robberies" were not mentioned by Dwyer in addition to the M. & T. robbery, petitioner replied that "They pointed out their information on other robberies, but [said that] by cooperating on the M. & T. Bank I would get a break on everything" (R. 65). To the question, "Who said that?", petitioner replied, "Either Mr. Dwyer or Mr. Roche," adding

that he did not remember which because "Both men were talking at the same time" (*ibid.*).[22]

At or about 3:45 p.m. petitioner was "booked" (see fn. 18, *supra*, p. 18) on the Redlinski robbery charge, and at or about 4:15 p.m. he was booked on a second charge, for the Sidell burglary (R. 84, 91, 97–99, 209–210, 219, 220–221). However, no steps were taken by the police at this time to file a formal complaint on either charge in any court or before any magistrate, or to arraign petitioner on either charge (R. 78, 210, 216–217).

4. *Petitioner's confessions on the evening of January 10*

At approximately eight o'clock that evening, special agents Eddy and Jenson of the F.B.I., at the direction of agent Roche, proceeded to the Buffalo police headquarters for the purpose of interviewing petitioner (R. 15, 23–24, 188, 198). Eddy and Jenson had learned from Roche around noon of that day that petitioner had been arrested by the Buffalo police a short time previously and was then in their custody (R. 49, 189, 197, 198, 206, 207). Other agents arrived at police headquarters at about the same time as Eddy and Jenson for the purpose of interviewing D'Antuono and Simmons (R. 18–19, 27–28, 110, 198).

At the time of the agents' arrival, petitioner was participating in a lineup, the third of the day, which the police were conducting (R. 15, 16, 27, 55, 88, 189, 199, 211). Eddy asked for and obtained from Chief

[22] The facts stated in this and the preceding paragraph were adduced in the M. & T. case only.

Golombeck permission to interview petitioner (R. 190). Owing to petitioner's participation in the lineup, it was necessary for the agents to wait approximately an hour before petitioner became available (R. 16–17, 27, 189, 199).

At about 9 p.m., after the lineup proceedings had been concluded, petitioner was brought by the police to a small office adjacent to the cell block, which was made available to the agents for questioning (R. 17–18, 189, 200, 204–205). The interview began at 9:02 p.m. and was concluded at 12:54 a.m. (R. 18, 19, 25, 32, 43, 46, 190, 202). Agent Roche was present in the building throughout this period; on one occasion he entered the room where petitioner was being questioned to listen to the proceedings for a few minutes (R. 32–33, 38, 44, 47, 110, 227, 232). D'Antuono and Simmons were being simultaneously interviewed during this period by other F.B.I. agents at other locations on the cell block floor (R. 27–28, 87–88, 212–213).

At the commencement of the interview, agent Eddy advised petitioner that he did not have to talk or make any statement to the agents but that any statement he did make might be used against him, and that he had a right to an attorney (R. 22, 27, 31, 35, 36, 43, 201). Petitioner told the agents that he "understood those rules" and remarked that Eddy had "told them to him once before" (R. 22).[23] From 9:04 to 9:41 the agents, who did most of the talking during this period, pointed out to petitioner the information

[23] Petitioner had on a previous occasion, approximately two weeks following the M. & T. robbery, been interrogated by Eddy concerning that robbery (R. 5–6, 57).

they had received concerning his participation in the M. & T. Bank robbery and his recent activities[24] (R. 32, 36, 37, 46). At 9:41, 39 minutes after the interview began, petitioner started to tell the agents about "the crimes he was involved in", including the M. & T. and Liberty Bank robberies (R. 32, 33, 35, 43, 46; see R. 125–130, 240–244). He told the agents that he "was a gambler", that "as a gambler he had lost", and that he "was willing to lay his cards on the table and tell us what it was about" (R. 36). The period from 9:41 to 11:37 was spent in confessing orally to his offenses; commencing at 11:37 and continuing to shortly before the end of the interview (at 12:54 a.m.), he dictated to Eddy, and Eddy wrote down verbatim in longhand, a written confession of his role in the M. & T. crime (R. 34, 41–42, 45, 46, 47–48). Petitioner then read the statement and signed it (R. 41, 44–45).[25]

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[24] See *supra*, pp. 4–5.

[25] The facts stated in this paragraph are based on the testimony of agents Eddy and Jenson. Petitioner denied, at the Liberty Bank hearing, that he was advised by the agents that he was entitled to an attorney and that he did not have to make a statement (R. 235), and testified at the M. & T. hearing that he asked the agents during the interview to get him a lawyer—any lawyer—and to talk to the latter about the matters they were interrogating him about (R. 60, 66). He also gave other testimony, principally at the M. & T. hearing (but before neither jury), which, if true, would have shown his confessions to be involuntary (see fn. 8, *supra*, pp. 7–8).

The trial judge in the M. & T. case, following the hearing out of the presence of the jury, stated that, aside from the testimony of the petitioner that he confessed because the F.B.I. agents told him that his mother and wife were in jail, he saw no evidence that the confession was coerced or involuntary; that, since that testimony was contradicted by the agents, a "question

The agents' interview with petitioner was interrupted once for a period of from one to five minutes when District Attorney Dwyer entered the room to show petitioner "a boot which had been taken from another man" and ask him some questions about it (R. 32, 44, 47, 57–58, 185–186). The discussion had nothing to do with the matters the federal agents were discussing with petitioner (R. 44, 186). The agents did not enter into the conversation and did not pay much attention to what Dwyer and petitioner were talking about (R. 32, 186).

On two occasions during the interview (and the interviews of other agents with D'Antuono and Simmons, which were simultaneously going on),

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of fact" was presented; and that he would "submit it to the jury as a question of fact, the same as you would submit any question" (R. 121–122). Petitioner, however, did not repeat his testimony in the presence of the jury (he did not take the stand). In the Liberty Bank case, the judge, following the hearing in the absence of the jury, found that "there was nothing involuntary" about the confession; that no "force [was] used, either actual or psychological"; that "the statement is voluntary and not involuntary" (R. 236–237). He stated, however, that he would, nevertheless, "submit the question [of voluntariness]" to the jury to determine as a "question of fact" (R. 238). In each case, as we have noted (see fn. 8, *supra*, pp. 7–8), the judge did submit the question of voluntariness to the jury, notwithstanding that petitioner took the stand in neither case.

In the M. & T. case, agent Eddy repeated in the presence of the jury his testimony that he advised petitioner at the start of the interview of his right to counsel and to decline to make any statement (but that any statement he did make could be used against him) (R. 124). (He was not questioned on the point in the presence of the jury in the Liberty Bank case.) Thus, the uncontradicted testimony on this point in the presence of the jury was that petitioner was so advised.

Lieutenant Klenk went to the cell block for the purpose of interrogating the prisoners about matters he and the city police were interested in, and on a third occasion he went to procure them for purposes of another lineup. In each instance he desisted on seeing that their interviews with the federal agents were still in progress. (R. 80, 87–88, 212–213, 219.) He did so "[a]s a matter of courtesy", he explained (R. 88, 213, 219; and see R. 98). "[I]n case there are visiting policemen from other cities or towns or state police or F.B.I.", he said, "if we have a prisoner and they are talking to them we show them the courtesy of letting them talk to our prisoners" (R. 88). "I was able if I cared to", Klenk testified, to "take [the prisoners] away from [the agents]. They were our prisoners, but [the agents] were visiting headquarters and we showed them the courtesy of letting them talk with them" (R. 213).

Following the interview, the agents left the building to buy a package of cigarettes for petitioner (at his request), returned briefly to deliver them, and finally departed at about 1 a.m., leaving petitioner in the custody of the Buffalo police (R. 25, 34, 191, 192, 202). No request was made that evening by any F.B.I. agent to any member of the Buffalo police force that petitioner be delivered to the F.B.I. for arraignment (R. 202, 227).

5. *Petitioner's arraignment on the following day*

At approximately ten o'clock the following morning, January 11, 1957, a complaint charging petitioner with violations of the federal bank robbery statute

was filed, at Roche's direction, with the local United States Commissioner (R. 111, 224–225). At about the same time, Roche called Lieutenant Klenk [26] to request the Buffalo police to surrender custody of petitioner to the F.B.I. "so that they [the F.B.I.] could arraign him" on the federal charges (R. 85–86, 111, 215, 227). In the apparent belief that this would be agreeable to the Buffalo police, and that the police would transfer the custody of petitioner to the F.B.I. before 11 a.m., Roche made an appointment with the United States Commissioner for the purpose of arraigning petitioner on the federal charges at 11 a.m. (R. 111, 228). Klenk, after talking to Roche, called District Attorney Dwyer to tell him of Roche's request (R. 86, 215). Dwyer instructed Klenk to wait until he heard further from Dwyer before taking any further action (R. 86). Shortly thereafter, Dwyer called Klenk back and told Klenk and Golombeck to take petitioner and the other two prisoners to Dwyer's office (R. 86, 101, 215). Klenk and Golombeck, accordingly, took the three prisoners from the Buffalo police headquarters to Dwyer's office in the Erie County Hall, where they arrived shortly before 11 a.m., and where petitioner remained for approximately two hours (R. 86, 101, 215–216).

Meanwhile, when petitioner had not been brought to the United States Commissioner's office by 12:30 p.m. (it was Roche's understanding that petitioner

[26] Roche testified that he spoke to Chief Golombeck on this occasion (R. 111, 227). It is evident from the testimony of Klenk and Golombeck, however (see R. 85–86, 101, 215), that it was actually Klenk to whom Roche spoke. Cf. R. 229.

would be brought by the Buffalo police to the Commissioner's office, where, after being delivered to the F.B.I., he would be federally arraigned, Roche called the Buffalo police headquarters to determine the cause of the delay (R. 111). On learning that petitioner and the other two prisoners were at Dwyer's office, Roche proceeded there, where he was told by Dwyer that the prisoners had not yet been arraigned "on the State charges" and that arrangements to that end were then being made (R. 111, 228–229).

Around 1 or 2 p.m. an information charging petitioner with violations of the New York Penal Law (apparently relating to the Redlinski robbery and the Sidell burglary) was filed in the Buffalo City Court (R. 80, 84, 86, 92, 216–217, 219). This was the first time that any formal complaint was filed charging petitioner with a violation of state law (R. 216–217). Shortly thereafter, petitioner was arraigned on these charges in the same court (R. 62–63, 80, 102, 214). He was then delivered to the federal authorities and, at 4 p.m., was arraigned on the two federal robbery charges before the United States Commissioner (R. 62–63, 86, 101–102, 111, 214, 220, 225, 228).

Following the hearing in each case, the trial court ruled that petitioner's federal arraignment had not been unduly delayed and that no working arrangement, similar to that involved in *Anderson* v. *United States*, 318 U.S. 350, had been shown to exist between the F.B.I. and the Buffalo Police Department under which the police would arrest petitioner and hold him

for the F.B.I. to question (R. 117–121, 236–238). The court did not write an opinion in either case. The rulings are reflected in the following colloquies with counsel:

The M. & T. Bank case:

THE COURT: I am going to hold that * * * there was no unusual delay as a matter of law that would foreclose testimony of Agents Eddy, Jenson or any statement obtained during the course of that interview.

* * * * *

* * * Very frankly, about all I can say is here is a man suspected of several crimes, and here is information given—it seems to me entirely properly—it seems to me it would be a failure on the part of the F.B.I. if they didn't make it known to the local authorities that a crime, according to their information, was about to be committed. There is no evidence that they gave these local police any instructions; the local police do as they please. They arrested him, what seems to me, regularly. Here was a man that wasn't being held just for investigation for one simple matter; it was quite apparent the Buffalo police wished to interview him with regard to many matters, and investigation went on. * * * [R. 120–121.]

The Liberty Bank case:

THE COURT: * * * [T]he motion as to voluntariness and as to delay in arraignment under Rule 5–A are denied, and the defendant Coppola may have an exception.

* * * * *

* * * There was no delay in the arraignment or a violation of the Constitution as raised under

Rule 5–A, or any other rule of the Constitution of the United States.

* * * * * *

MR. BROUGHTON [government counsel]: May I ask your Honor, if you would hold that you find as a matter of fact no working agreement existing between the F.B.I. and the Buffalo Police Department with respect to the Buffalo Police arresting this man or men and holding them so the F.B.I. could question them.

THE COURT: That was a necessary prelude to the finding. * * * [R. 237–238.]

SUMMARY OF ARGUMENT

I

Petitioner does not challenge the rulings below on the issue of the voluntariness of his confessions, and we submit that these voluntary confessions of federal crimes to federal officers while in the custody of city police officers were properly admitted at his trials, even though at the time they were made, the detention had exceeded permissible limits under the local arrangement law, because the detention was not the result of connivance or collaboration with the federal officers of the sort involved in *Anderson* v. *United States*, 318 U.S. 350.

A. The confessions involved in the *Anderson* case were products of a true collaborative effort by state and federal authorities as they jointly sought to solve a single crime. The *Anderson* record shows that the federal agents and the state officers worked hand in hand, not only in the general investigation of the

crime but also in the interrogation of the prisoners, whom the state officials took into custody and detained (illegally, as this Court held and the government acknowledged) *for the primary if not the sole purpose of enabling the federal agents to interrogate them.* The record reflected joint action of the most intimate sort, for almost a week, as federal officers interrogated a county sheriff's prisoners, who, though technically in the custody of the State of Tennessee, were in fact arrested by the state officers for the purpose of questioning by federal officers, as part of a cooperative endeavor by the officers of the two sovereignties to solve a single crime constituting an offense against each.

B. The instant case is of a wholly different sort. The circumstances under which the confessions at bar were made have little in common with those of *Anderson* v. *United States.* The resemblances are wholly superficial, and in no way evidence the sort of "working arrangement" or "collaboration" between state and federal officers in a process of illicit detention and interrogation which was there found to taint the confessions.

1. Petitioner and his two companions were arrested by the Buffalo police following the receipt of information from the F.B.I. that they had committed a local robbery and were planning to commit another, both within the local officers' jurisdiction. The evidence is undisputed that the arrests were solely the act and responsibility of the local officers. No federal agent was present, and no agent requested such action. In the Liberty Bank case, moreover, counsel

for petitioner disavowed any claim that petitioner was arrested "at the behest of the F.B.I."—and the context shows that counsel thereby meant to concede that the arrest was not made at the request of the F.B.I.

There is no evidence, furthermore, that the arrests were made for the purpose (in whole or in part) of enabling the F.B.I. to question the arrested persons while in custody, or of otherwise accommodating a federal interest. In this lies the major distinguishing feature between the present case and the *Anderson* case. The evidence shows that the police and the prosecuting authorities of the State of New York, from beginning to end, had their own interests to serve, and that, on the whole, those interests were unrelated to those of the F.B.I.

The fact that the F.B.I. was the source of the information which led to the arrests in no way detracts from these conclusions. The furnishing of the information relating to the Redlinski robbery was no more than a normal and usual act of official (and commendable) cooperation between a federal and a local investigative agency. The information that petitioner and his associates were planning to rob a local tavern at a certain hour of a certain day was in the same category, except that this information pertained to a crime which was as yet uncommitted and so was preventable. The F.B.I. had no choice but to communicate this information to the police in order that appropriate action might be taken.

2. The telephone call by one of the arresting offi-

cers, Golombeck, to F.B.I. agent Roche, while the officers were on their way to police headquarters with the prisoners, advising Roche of the arrests, does not show that the arrests were made on behalf of or at the request of the F.B.I. The placing of this call is fully explained by Golombeck's testimony that he made the call as a courtesy to Roche for supplying him with the information which made the arrests possible.

3. Nor does the fact that Roche, following Golombeck's call, went to police headquarters to ascertain whether "anything had occurred relative to" the bank robberies the F.B.I. had under investigation, indicate that the arrests were made at the request or on behalf of the F.B.I. During the two preceding months the F.B.I. had been receiving periodic reports from its confidential informant, Buyers, in which Buyers reported what he was learning from petitioner about his own and his associates' criminal activities. Apparently, the F.B.I. did not wish to make an arrest until it had learned all that it could through Buyers. Petitioner's arrest put an end to the possibility of acquiring more information through Buyers. Consequently, the F.B.I. now desired to question petitioner and his associates in connection with the federal crimes it had under investigation, and it was doubtless with this in mind that Roche went to police headquarters as soon as he learned of the arrests. But there is nothing to indicate that any interview which the F.B.I. might succeed in arranging with the arrested men would be on any basis other than by leave of,

and at the convenience of, the local police, whose prisoners they were.

4. There was nothing of present significance, under the circumstances, in Roche's having lunch with the two police officers, Golombeck and Klenk, and the county District Attorney, Dwyer. Assuming (though the record is silent on the point) that the possibility of the F.B.I. agents' interviewing the prisoners was discussed at the luncheon, there is nothing which suggests that the discussion was in terms other than that the interviews would be at the convenience of the local officers and with their permission. Anything in the nature of a controlling hand in the proceedings on the part of the F.B.I. (surmised by the dissenting judges below) would be wholly out of keeping with the facts of record. And there was nothing improper about an F.B.I. agent's asking local officials for permission to interview persons in their custody.

5. The record of what actually took place at headquarters that afternoon and evening and on the following day shows that the custody of the prisoners was in the state, for state and local purposes, and related to state and local crimes, and that the limited and subordinate role played by the F.B.I. in the proceedings was by leave of the state and city authorities and subject to their convenience.

Thus, it appears that during the afternoon of the day of his arrest petitioner was extensively questioned by state and local officers concerning state crimes within the exclusive jurisdiction of the state and local officers. (There was, in addition, some state and local questioning concerning the bank rob-

beries here involved, but that fact is not inconsistent with our position since those crimes, being state as well as federal offenses, were as much matters of state and local concern as the crimes over which the local jurisdiction was exclusive.) Petitioner participated in lineups, or showups, conducted by the local officers for their own purposes, without any joinder by federal officers. The crimes for which he was booked by the police and for which he was locally arraigned the following day were purely local in character.

6. In only one instance did a state and a federal officer jointly interview petitioner, and even as to this interview it is not clear that there was any joint questioning pertaining to a single crime.

7. The F.B.I. interview of that evening, at which the confessions were made, was held only after the interviewing agents had secured police permission. Before the interview could begin, moreover, the agents had to wait until a lineup which was in progress when they arrived at headquarters had been concluded. The interview was interrupted on one occasion while a state official questioned petitioner about a state matter with which the federal agents had no concern. A police officer did desire, on several occasions during the federal interview, to interrogate petitioner about matters in which the police were interested and desisted upon seeing that the agents' interview was still in progress, but it is clear that he did so solely as a matter of courtesy.

8. The state and local officers' refusal on the following day to surrender the custody of petitioner

to the federal authorities for the latter's arraignment purposes until after they had accomplished the state arraignment further evidences the true character of the arrest and detention as non-federal.

9. The fact that prior to petitioner's apprehension the F.B.I. and the local police collaborated closely in attempting to solve the M. & T. Bank robbery does not indicate that there was a "working arrangement" (in the sense of the *Anderson* case) between the police and the F.B.I. in *arresting and detaining petitioner and interrogating him* concerning his part in that crime. Such commendable cooperation between state and federal law enforcement officers (*Elkins* v. *United States*, 364 U.S. 206, 221) cannot be the basis for an inference of illicit collaboration between such officers in depriving a prisoner of his rights.

The issue is factual and was resolved against petitioner by the two trial judges after full hearings and development of the relevant facts. These findings were confirmed by the court of appeals, and accordingly should be accepted here. The dissenting judges' views are based largely on surmise and conjecture; moreover, they lacked the advantage, which the trial judges had, of seeing and hearing the witnesses.

II

The fact that when petitioner confessed that he had been detained by local officers longer than was permissible under local law did not in itself make his confessions of federal offenses to federal officers inadmissible.

A. Petitioner's contrary view would read out of the *Anderson* decision the very basis on which that case was decided, *i.e.*, that there was connivance and collaboration by federal officers in the unlawful detention.

B. It also mistakes the holding and rationale of *McNabb* v. *United States*, 318 U.S. 332, upon which the *Anderson* opinion was based. *McNabb* v. *United States* established an exclusionary rule of evidence for federal trials, the purpose of which was to deter federal law enforcement officers from themselves becoming law-violators by failing to heed the command of the federal prompt-arraignment statutes. The rationale of the *McNabb* case is inapplicable where no federal wrongdoing is involved.

The only officers that federal courts can effectively control are federal officers. If an unlawful detention is not furthered or participated in by federal officers, a rule of exclusion in the federal courts would not tend to advance the objective of prompt arraignment under Rule 5(a), F.R. Cr. P. State officers enforcing state law would not be deterred from future violations of local detention provisions by an exclusionary rule in the federal courts. On the other hand, an exclusionary rule would mean that state officers could interfere seriously with federal prosecution.

C. The argument that the federal courts would somehow ratify or condone illegality if they were to admit a confession obtained during an illegal detention by state officers is not well founded. The federal rule of exclusion is applied, not because admission of the

evidence implies approval or ratification, but because federal exclusion effectively serves to keep federal law enforcement within proper bounds. The most that the federal courts can undertake to do is to make certain that federal officers conduct law enforcement activities within proper limits. "The use by [federal] prosecuting officers of evidence illegally acquired by others does not necessarily violate the Constitution nor affect its admissibility". *McGuire* v. *United States*, 273 U.S. 95, 99; see also, *e.g.*, *Burdeau* v. *McDowell*, 256 U.S. 465.

D. *Elkins* v. *United States*, 364 U.S. 206, is not opposed to these conclusions. That case held that evidence seized by state officers in violation of a *federal constitutional right*—the right under the Fourteenth Amendment to be free from unreasonable searches and seizures by state officers—is not admissible in a federal criminal trial. The instant case involves no claim of violation of a federal constitutional right,[27] or indeed of a federal right of any kind. The only violation was of the right to prompt arraignment under a local state statute. Moreover, evidence is excludable under the *Elkins* rule because the very act of the state officers in seizing it constitutes a violation of the constitutional right of the victim. Here, the contested evidence was obtained by federal officers who were innocent of any wrongdoing.

[27] The rule of the *McNabb* case is not incorporated into the Due Process Clause of the Fourteenth Amendment. See, *e.g.*, *Brown* v. *Allen*, 344 U.S. 443, 476.

E. Finally, the rule for which petitioner contends—that a confession made to federal officers while the defendant is being illegally detained by state officers is automatically excludable at the federal trial—would make the admissibility, in a federal court, of a voluntary and otherwise admissible confession of a federal offense, made to a federal officer, depend, if it happened to be made while in the custody of state or local officers, upon the widely variant laws of the states, not only in the field of arraignment following arrest but also in the field of arrest itself. Desirable uniformity of decision upon what is essentially a federal question would be precluded, and inquiry into the details of local law and the local precedents in these fields by courts having neither familiarity with, nor special competence in, the subject would be required in each case.

A federal officer desiring to question a person who is in local custody, in connection with an investigation in which the officer is engaged, should not be required to determine whether the custody of the prisoner was legally effected and is being legally maintained. To make inquiry into such matters—to check, in effect, on whether the local officials know their business and have lawfully carried it out—might be considered presumptuous and offensive. In any event, the federal agent should not have the task of determining whether the arrest or detention was unlawful under the rules of that particular jurisdiction.

ARGUMENT

The issue as to the voluntariness or involuntariness of petitioner's confessions in these bank robbery cases, which petitioner raised at both his trials, was in each case, following thorough canvassing, resolved against him in the district court (see footnotes 8 and 25, *supra*, pp. 7–8, 24–25), and petitioner made no claim in the court of appeals, and makes no claim in this Court, that the determination was erroneous. Rather, he argues that—under the rule of *Anderson* v. *United States*, 318 U.S. 350, and *McNabb* v. *United States*, 318 U.S. 332—the confessions, even though freely given, were inadmissible at his federal trials, because they were made to federal officers while he was illegally detained at the Buffalo police headquarters. In Point I, *infra*, pp. 41–69, we answer petitioner's argument that this detention in a city police station was the result of actual collaboration and connivance between state and federal officers of the kind which this Court held in the *Anderson* case should vitiate a confession obtained while the defendant was in such custody. In Point II, *infra*, pp. 70–83, we show that the mere fact that at the time when petitioner voluntarily confessed his federal offenses to federal officers he had been held by local officials longer than was permissible under local law does not make his confessions inadmissible at his trials for those federal crimes.

I

PETITIONER'S VOLUNTARY CONFESSIONS OF FEDERAL CRIMES TO FEDERAL OFFICERS WHILE IN THE CUSTODY OF CITY POLICE OFFICERS WERE PROPERLY ADMITTED, ALTHOUGH HIS DETENTION WAS IN VIOLATION OF LOCAL LAW, BECAUSE THE DETENTION WAS NOT THE RESULT OF CONNIVANCE OR COLLABORATION WITH FEDERAL OFFICERS OF THE SORT INVOLVED IN *ANDERSON* V. *UNITED STATES*, 318 U.S. 350

INTRODUCTORY

In *Anderson* v. *United States*, 318 U.S. 350, this Court, applying the rationale of *McNabb* v. *United States*, 318 U.S. 332, reversed federal convictions based on confessions made to federal agents while the defendants were being detained by state authorities in violation of a state statute—a statute prohibiting the commitment to prison of any person for a criminal matter prior to examination before a state magistrate. Pointing out that the defandants were not arrested and arraigned by federal authorities until days after they had been intensively questioned by the federal officers while in state custody and their confessions obtained, the Court concluded that "The considerations which led to that decision [*McNabb*] also govern this case" (318 U.S. at 355) because (p. 356):

> There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty

of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers.

Petitioner urges (Br. 15–26), and the dissenting judges below concluded, that the *Anderson* decision and rationale govern this case. We submit, however, that the majority below correctly held this case to be decisively different in its facts, and thus not governed by that holding. Because of certain similarities—of a purely surface character, we believe—between the two cases, it will be necessary to analyze their respective facts in some detail.

We assume in our discussion that petitioner, at the time of his confessions to the federal officers on the evening of the day of his arrest, was being detained by the local police in contravention of local law. The New York arraignment statute (like Rule 5(a) of the Federal Rules of Criminal Procedure) requires that arrested persons be taken before a magistrate for preliminary examination "without unnecessary delay". Code of Criminal Procedure, § 165. Petitioner was apprehended at about 9:30 on the morning of January 10 and was not arraigned by the state until approximately 2 p.m. on January 11 (*supra*, pp. 11–13, 28). If petitioner's arrest, for purposes of this statute, occurred at the time of his apprehension, there would be little doubt that the local officers' failure to arraign him during the remaining business hours of that day constituted non-compliance with the statute, under the decisions of the New York

courts,[28] and the government so conceded in the court of appeals. The government did seek—at the oral argument before the *en banc* court—to sustain the legality of the local officers' detention of petitioner on

[28] The New York courts have construed the local arraignment statute as making it illegal for police officers to delay the arraignment of an arrested person in order to subject him to extended interrogation. *People* v. *Mummiani*, 258 N.Y. 394, 180 N.E. 94 (1932); *People* v. *Alex*, 265 N.Y. 192, 195, 192 N.E. 289, 290 (1934); *People* v. *Cohen*, 243 App. Div. 245, 249–250, 276 N.Y.S. 851, 855–856 (1935); *People* v. *Kelly*, 264 App. Div. 14, 16, 18, 35 N.Y.S. 2d 55, 57, 58 (1942); *People* v. *Redmond*, 265 App. Div. 307, 309–310, 38 N.Y.S. 2d 727, 729–730 (1942); *Bass* v. *State*, 196 Misc. 177, 182, 92 N.Y.S. 2d 42, 47 (Ct. of Claims, 1949); see, also, *People* v. *Elmore*, 277 N.Y. 397, 403–405, 14 N.E. 2d 451, 453–454 (1938); *People* v. *Snyder*, 297 N.Y. 81, 91–92, 74 N.E. 2d 657, 661–662 (1947); *People* v. *Lovello*, 1 N.Y. 2d 436, 136 N.E. 2d 483 (1956); *People* v. *Calebressi*, 233 App. Div. 79, 80, 251 N.Y.S. 603, 604 (1931); *People* v. *Trinchillo*, 2 A.D. 2d 146, 147, 153 N.Y.S. 2d 685, 686 (1956). Here, as the record shows, petitioner was extensively questioned by state and local officers during the afternoon of the day of his arrest (commencing at about 2:30) concerning various state and local crimes of which he was suspected (*supra*, pp. 19–20), and an acknowledged purpose of the police in detaining him was to subject him to such interrogation (R. 77, 95).

New York does not exclude confessions and incriminatory statements solely because they were made during a period of illegal custody; if otherwise admissible, such statements are received subject to the duty of the trial judge, upon request of counsel, to instruct the jury that it should consider the illegal character of the custody in determining whether the statements were voluntary. *People* v *Spano*, 4 N.Y. 2d 256, 260–261, 150 N.E. 2d 226, 228 (1958); *People* v. *Elmore*, 277 N.Y. 397, 404, 14 N.E. 2d 451, 454 (1938); *People* v. *Alex*, 265 N.Y. 192, 194–195, 192 N.E. 289, 290 (1934); *People* v. *Mummiani*, 258 N.Y. 394, 396, 180 N.E. 94, 95 (1932); *People* v. *Doran*, 246 N.Y. 409, 423, 159 N.E. 379, 384 (1927); *People* v. *Trybus*, 219 N.Y. 18, 22, 113 N.E. 538, 540 (1916).

the evening of the day of his arrest by the argument that his arrest, within the contemplation of the arraignment statute, did not occur until he was "booked" at police headquarters late that afternoon.[29] Nevertheless, both the majority and the dissenting opinions below treated the arrest as having taken place when petitioner was apprehended. The court thus, in effect, rejected the basis of the government's argument on this point, *i.e.*, that the arrest occurred when petitioner was booked. We accept the decision of the court of appeals on the point, and do not press it in this Court.[30]

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[29] Petitioner was booked for the Redlinski robbery at 3:45 p.m., and for the Sidell burglary at 4:15 (*supra*, p. 22). By agreement of counsel (see R. 289), 5 p.m. was the latest that arraignment could have been effected on that day in the Buffalo City Court (in which petitioner was in fact arraigned on the following day). The government argued, at the *en banc* hearing, that the intervening period of approximately an hour was so short that it was by no means clear under New York law that the local officers' failure to arraign petitioner within it was illegal, if, indeed, it would have been feasible to do so at all.

[30] Petitioner, in addition to contending that his arraignment was unreasonably delayed, argues that his detention was illegal from its inception—in other words, that his arrest was illegal (Br. 24–26). He relies on the fact that the police concededly had no arrest warrant, and on testimony by Chief Golombeck (in answer to a leading question by petitioner's counsel) that he was "holding him [petitioner] on suspicion" (Br. 25; R. 98–99). Golombeck indicated at another point in his testimony, however, that, at least in the case of petitioner, the arrest was based on probable cause for the belief that he had committed a felony, *viz.*, the Redlinski robbery (*supra*, p. 13), and this is a proper ground for arrest without warrant under the law of New York. See fn. 15, *supra*, p. 13. In any event, it is immaterial in this case whether the arrest was valid or not. The only relevant question is whether petitioner was being

A. THE CONFESSIONS IN THE *ANDERSON* CASE

As this Court undoubtedly viewed the record, the confessions involved in the *Anderson* case were products of a true collaborative effort at all stages by state and federal authorities (the sheriff and deputy sheriffs of Polk County, Tennessee, and agents of the F.B.I.) as they jointly sought to solve the identical crime, *i.e.*, the dynamiting of TVA-owned power lines and steel towers. The record shows that the federal agents and the state officers worked hand in hand with each other, not only in their general investigation of the dynamitings but also in the interrogation of the prisoners, whom, the evidence showed, the state officials took into custody and detained (illegally, as this Court held and the government acknowledged) *for the primary if not the sole purpose of enabling the F.B.I. agents to interrogate them.*

"When we first went into Polk County to investigate these dynamitings", one of the F.B.I. agents testified in the *Anderson* case (Record, No. 10, Oct. Term, 1942, pp. 427–428)—

> Agent Mann and I first contacted Sheriff B. E. Riggs and had a conference with him about what he thought of these various dynamitings and discussed with him who he might suspect. He told us at that time that he did suspect quite a number of people and we had a dis-

illegally detained when he made his confessions to the F.B.I. agents. As indicated in the text, we do not dispute that he was, by reason of the failure of the police to arraign him with the promptness required by New York law. Even if it were to be assumed, *arguendo*, that his detention was illegal from the beginning, no pertinent factor would be added to the case.

> cussion at that time, he mentioned 80 or 90 individuals possibly that might be involved in such a thing and we discussed with him the manner and method to use to talk with those various men. We had a right to talk to any individual and of course couldn't very well talk to them unless they were in custody. * * *

No mention was made in the agents' first discussions with the sheriff "about taking anybody into custody" (*id.*, p. 428). The sheriff merely told the agents that he "would make deputy sheriffs available to us to take us to these various places to talk to anybody", and the agents in fact "talked to quite a number who were not in custody" (*id.*). Subsequently, however, following the receipt by the sheriff of information from a confidential informant that certain men, whom the informant identified, were present at a meeting at which "dynamiting was discussed" (*id.*, pp. 192, 428), the sheriff and the agents had another conference at which (p. 428; see, also, p. 192)—

> Mr. Biggs [the sheriff] said he was going to lock all of them up who were at that meeting and we [the agents] concurred to this extent. We told him we would like to talk to these individuals very much * * *. We didn't make any special request of the sheriff to take them into custody but we did say we wanted to talk to them and we told Sheriff Biggs that we wanted to talk to them and that we were interested in talking to them. * * *

The sheriff proceeded to "lock up everybody Long [the confidential informant] had mentioned" (Record, p. 192; see 318 U.S. at 352). While according to the

sheriff the prisoners were "arrested on State charges" (Record, pp. 540, 542), F.B.I. agent Mann testified (*id.*, p. 475):

> The Sheriff took these various prisoners in custody so we could talk to them, so all of us could talk to them, so they would be available to the agents and the sheriff and they could talk to them and that was the purpose in taking them into custody.

The same agent further testified (pp. 333–334):

> X. You did tell him [the sheriff] you wanted to talk to them, and you couldn't talk to them unless they were in custody? A. That is true, yes, sir.
>
> X. Then the sheriff took them into custody so you could talk to them? A. That is right.
>
> X. So, as a matter of fact, all these defendants were arrested, picked up and put in jail so you and Mr. Roche and these other agents could talk to them? A. The sheriff picked them up on his own accord; I did not direct the sheriff to pick up any individual.
>
> X. The sheriff picked them up so you and these other agents could talk to them? A. Of course, that was the purpose, we wanted to talk to anybody he picked up.

Not only did the sheriff place the suspects in custody in order that the F.B.I. agents might interrogate them, but he also requested the agents to interrogate them. "When we first came into the Basin", the F.B.I. agent-in-charge testified, "he [the sheriff] told us he suspected certain parties and told us he wanted us to examine them" (Record, p. 492; see, also, pp. 172–173).

Following their apprehension, the arrested individuals, instead of being taken before a "magistrate or other committing officer, as required by Tennessee law", were taken, as stated by this Court, "to the company-owned Y.M.C.A. building in Copperhill, which was being used by the sheriff and his special deputies as their headquarters" (318 U.S. at 352). There they were "questioned by the federal agents intermittently over a period of six days during which they saw neither friends, relatives, nor counsel" (*id.*, p. 353. The confessions in issue "were the fruit of this interrogation" (*ibid.*).

Some of the prisoners were kept part of the time in one or the other of two local jails (318 U.S. at 353, 354, 355; Record, pp. 179, 180, 188, 201–204, 248). Illustrative of the "working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record" (318 U.S. at 356)—the decisive element in the *Anderson* case—was the testimony of an F.B.I. agent that, if he wanted to talk to a prisoner who was not in the Y.M.C.A. building at the time, he would make his wishes known to the sheriff, who would then make arrangements to have the prisoner brought to the agent for questioning (Record, p. 181):

> Q. You told Sheriff Biggs, "I want to see Earl Hubbard" and he got him, is that correct? A. That is right.
>
> Q. And told him that in reference to Ed Simonds? A. Told him that in reference to all the individuals he had in custody.

> Q. In other words, he would go get those men and bring them to the YMCA, so you could talk to them? A. That is right.

See, also, pp. 305, 306, 375, where other agents testified to the same effect.

The intimacy of the federal officers' "collaboration with state officers" as they "secured [evidence] improperly" (318 U.S. at 356) was evidenced by a great many other facts which might be cited from the *Anderson* record. For example, though apparently neither the sheriff nor his deputies took active parts in the questioning of the prisoners,[31] the sheriff was frequently if not usually present during their interrogation by the federal officers (Record, pp. 196, 235, 254, 255, 309, 334, 432). The sheriff was likewise present at some of the federal agents' meetings at which the investigation was discussed at length and courses of action planned (*id.*, pp. 169–170, 334–335, 436–437, 472–473, 492), including one at which the participants "went over a list of individuals that we thought might possibly be implicated" (p. 170). On at least one occasion a federal officer accompanied a deputy sheriff as the latter transported a prisoner from one of the local jails to the Y.M.C.A. building (p. 400). Two federal agents and two deputies once

[31] The sheriff himself, it appears, left the questioning of the prisoners largely if not entirely to the F.B.I. agents. With regard to the deputy sheriffs, the F.B.I. agent-in-charge testified that they "were not in any way interested in the investigation or questioning of these men" (Record, p. 495). The deputies' duties were, apparently, primarily the guarding and transporting of the prisoners (see, *e.g.*, *id.*, pp. 171, 172, 200–201, 204, 224, 247–248, 268–269, 375, 400, 431).

jointly retrieved an auger which one of the prisoners stated in his confession he had dropped into a river after it had been used in the dynamitings (pp. 417, 437–439, 442–443). On one occasion the sheriff, at the request of the federal officers, made arrangements for three of the prisoners, following their making of incriminating admissions, to spend the night together at one of the local jails, at their request, so that they might collaborate on a written statement (pp. 188, 195, 196, 275–276). In two instances federal agents and a deputy sheriff together picked up a suspect and transported him to the Y.M.C.A. building for questioning[32] (pp. 530–533, 535–539, 559, 633, 635, 746–748, 754–755, 764–766, 792–793, 795–798). In short, the record reflected intensive joint action, for almost a week, as federal officers interrogated a county sheriff's prisoners, who, though technically in the custody of the State of Tennessee, were in fact arrested by the state officers for the principal if not the sole purpose of enabling the federal officers to question them—all as part of a cooperative endeavor on the part of the officers of the two sovereignties to solve a single crime constituting an offense against both.

B. THE CONFESSIONS AT BAR

The instant case is of a wholly different sort. The circumstances under which the confessions were made

[32] The evidence was conflicting in these instances as to whether the persons picked up were arrested, or accompanied the officers voluntarily. According to the agents and the sheriff, the men came voluntarily (pp. 530–533, 535–539, 559, 792–793, 795–798).

have little in common with those of the *Anderson* case. The resemblances are wholly superficial, and in no way evidence the sort of "working arrangement" or "collaboration" between state and federal officers in a process of illicit detention and interrogation which was there found to taint the confessions. We shall review the pertinent facts of this case to show that the circumstances here fall far short of the type of "working arrangement" with which the Court was concerned in *Anderson* v. *United States*.

1. *The arrest.*—Information came to the attention of the chief of detectives of the Buffalo Police Department through the F.B.I. that petitioner and two companions (D'Antuono and Simmons) were the perpetrators of a recent crime within the investigative jurisdiction of the city police, the robbery of a Buffalo butcher named Redlinski. Photographs of the three men were supplied, and the victim of the holdup identified petitioner, through his photograph, as one of his assailants. Two days later, the city officer received additional information, from the same source, that the same three men were planning a second holdup, the robbery of a Buffalo tavern, possibly the El Chico on Clinton Street, at ten o'clock on the following morning, January 10. This crime would also have been one within the jurisdiction of the local police. On the morning of the 10th, the officer stationed patrolmen at strategic locations in the threatened area to prevent any holdup attempt, proceeded himself with two other city officers to the area, found there the men about whom he was warned,

apprehended them, and took them to police headquarters for questioning. See the Statement, *supra*, pp. 9–13.

The evidence is undisputed that the arrests were solely the act and responsibility of the Buffalo police. The decision to take the three men into custody was solely that of the local officers; no federal agent was present, and no agent requested such action (R. 82, 101, 116). In the Liberty Bank case, moreover, counsel for petitioner disavowed any claim that petitioner was arrested "at the behest of the F.B.I." He argued, consequently, that any testimony on the point would be irrelevant—a contention which the trial court sustained (*supra*, pp. 15–17).

The dissenting judges below seek to discount the significance of this disavowal by saying that it was made "in the heat of trial", and by distinguishing between "behest" and "request" (R. 306–307). On the latter point they say, "The word 'behest' is synonymous with *order* or *command* or *mandate*, and hence this purported concession still leaves untouched appellant's contention that his state apprehension and subsequent detention were at the *suggestion* and *request* of a federal officer" (*ibid.*; emphasis in the original). Neither point has validity. The suggestion that the concession was made "in the heat of trial"—a contention which, significantly enough, counsel himself does not make—is refuted by the record. The concession was made at the second (Liberty Bank) trial, after it had been shown at the M. & T. trial that the arrest had not been made at the request of or on behalf of the F.B.I. Moreover, the concession was made, not once, but three times—at intervals spaced

over twenty pages of the printed record (R. 217–218, 230, 238; see *supra*, pp. 15–17). The last occasion was during oral argument before the district court, in reply to a query by government counsel, who, to make sure he had not misunderstood the nature of the disavowal, stated his "understand[ing]" of it; counsel for petitioner acknowledged that government counsel had correctly stated its "substance" (R. 238; *supra*, p. 17).

With respect to the distinction which the dissent makes between "behest" and "request", it seems extremely doubtful that, in the context in which the concession was made (*supra*, pp. 15–17), counsel had any such distinction in mind. Petitioner makes no argument based on such a distinction here. It is clear, in any case, that as a consequence of defense counsel's disavowal the government refrained from developing the point further (R. 230); indeed, it was prevented from doing so by rulings of the court sustaining objections by the defense (R. 217–218, 230). In these circumstances any ambiguity that might be thought to survive as to whether counsel intended to concede that petitioner's arrest was not at the "request" of the F.B.I., or merely that it was not at the "command" or "order" of the F.B.I., should not benefit petitioner or be ground for disturbing the trial judge's findings—particularly since it is clear that the F.B.I. had no authority to give "orders" to the police, so that the most favorable possible inference which could be drawn from the record (from petitioner's viewpoint) is that the police acted at the F B.I.'s request. As stated above, the undisputed testimony in the M. & T. case (in which no concession

was made by defense counsel) was that petitioner's arrest was not requested by the F.B.I.

Nor is there any evidence—with the possible exception of Chief Golombeck's telephone call to F.B.I. agent Roche while the arresting officers were on their way with the prisoners to police headquarters, informing Roche of the arrests (*supra*, p. 14; *infra*, pp. 56–57)—that the arrests were made for the purpose (in whole or in part) of enabling the F.B.I. to question petitioner and his associates while in custody, or of otherwise accommodating a federal interest. In this lies the major feature distinguishing this case from the *Anderson* case. The evidence shows that the Buffalo police and the prosecuting authorities of the State of New York, from beginning to end, had their own interests to serve and that, by and large, those interests were totally unrelated to those of the F.B.I. (although admittedly in the case of two of the crimes concerning which petitioner was questioned by the local officers—the bank robberies here involved—the local and the federal interests coincided).

The fact that the source of the information which led to the arrests was the F.B.I. in no way detracts from these conclusions. The furnishing of the information relating to the Redlinski robbery was, clearly, no more than a normal and usual act of official cooperation between a federal and a local investigative agency. Having received in the course of its regular investigative activities information relating to a crime outside its investigative jurisdiction, the F.B.I. passed the information on to the agency within whose jurisdiction the offense did lie—the local police department. The furnishing of this information was but an ex-

emplification of that "[f]ree and open cooperation between state and federal law enforcement officers" which, as this Court has said, "is to be commended and encouraged" (*Elkins* v. *United States*, 364 U.S. 206, 221). Indeed, it was the duty of the F.B.I. to furnish this information to the police, just as it would have been the duty of a private citizen who happened to come into possession of such information.

The second item of information furnished by the F.B.I.—that petitioner and his associates were planning to rob a local tavern at a certain hour of a certain day—was in the same category, except that this information pertained to a crime which was as yet uncommitted and so was preventable. Obviously, the F.B.I. had no choice but to communicate this information to the police in order that appropriate action might be taken. It would have been "a failure on the part of the F.B.I.", as remarked by the trial court in the M. & T. case, "if they didn't make it known to the local authorities that a crime, according to their information, was about to be committed" (R. 121).[33]

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[33] Compare Judge Moore's observation in his dissent from the original panel judgment of the court of appeals: "Surely no one would advocate their [the F.B.I.'s] remaining silent and not informing the local police [about petitioner's alleged participation in the Redlinski robbery and the robbery to be perpetrated on the morning of the 10th]" (R. 276).

The same considerations explain the F.B.I.'s giving of the information about the planned tavern robbery to Dwyer, the local district attorney (*supra*, pp. 10–11). As F.B.I. agent Roche explained, he gave Dwyer this information "so that he might take whatever action he desired to protect the citizens of Buffalo and to prevent, if possible, another hold-up" (R. 108). Nor is there significance in the fact that Roche mentioned to Dwyer on the occasion of his visit that the F.B.I. had been

2. *The telephone call from city detective Golombeck to F.B.I. Agent Roche.*—At about 11 a.m., shortly following the arrests, Golombeck placed a telephone call to Roche, the F.B.I. agent who had supplied the information which led to the arrests. Golombeck told Roche that the three men, the subjects of Roche's information, had been discovered by the police in the vicinity of the El Chico (the tavern which, according to Roche's information, was possibly the object of the suspects' holdup plans), that they had been arrested, and that the police were then on their way to police headquarters with them (R. 108, 113). The dissenting judges below lay considerable stress on this telephone call and purport to find in it weighty support for their theory of the case (R. 304–305, including fn. 5). They say that the placing of this call by Golombeck before the police officers had even arrived at headquarters with the prisoners is inconsistent with the majority's conclusion that "the state concentrated on its own business first" (R. 305, fn. 5; R. 288). Petitioner likewise stresses this call (Br. 19–20). We submit that these arguments attach undue significance to the incident.

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investigating petitioner in connection with the M. & T. and Liberty Bank robberies and the "contemplated" robbery of a third Buffalo bank (*ibid.*). The M. & T. and Liberty Bank robberies were state as well as federal offenses (as would also have been a holdup of the third bank) and hence of as much official interest to Dwyer as to Roche. It was only natural, therefore, that Roche should mention to Dwyer that the F.B.I. had petitioner under investigation in connection with these bank robberies.

The placing of this call certainly took no more than a couple of minutes. Golombeck testified that he made the call as "a courtesy extended to [Roche] for supplying me with the information" (R. 102) which led to the arrests. The arrests were plainly a matter of importance to the police, as they must have been to the citizens of Buffalo generally.[34] It was the F.B.I.'s information which made the arrests possible. It is unnecessary to probe for a deeper motive than the one which Golombeck gave to account for his taking the minute or two needed to call the agent who supplied the information and let him know (doubtless with an expression of thanks) that the F.B.I.'s informant evidently knew whereof he spoke. Roche's testimony that he was "not necessarily" expecting Golombeck's call but that he "thought" Golombeck would call "if anything had developed" (R. 115–116) is consistent with and supports Golombeck's explanation.

3. *The arrival of F.B.I. agent Roche at police headquarters.*—The fact that within an hour after receiving Golombeck's call F.B.I. agent Roche proceeded to the Buffalo police headquarters "to ascertain * * * whether or not anything had occurred relative to" either of the two bank robberies the F.B.I. had under investigation (R. 108, 113–114) is likewise wholly consistent with the interpretation of events by the court below, and gives no support to the minority's view that the local police, in making the arrests and detaining the prisoners, were acting,

[34] Cf. *supra*, p. 18.

"at least in part, to satisfy the desires of the FBI" and at the latter's request (R. 303, 306–307).

It is true that the arrests were of great interest to the F.B.I. and that the federal agents desired to talk to the prisoners in connection with the M. & T. and Liberty Bank robberies. The F.B.I. had had these crimes under investigation from the dates of their commission, on February 15 and October 2, 1956, respectively. On November 5, 1956 (two months prior to the arrests), petitioner had admitted his implication in both offenses to the F.B.I.'s confidential informant, Buyers, who promptly reported petitioner's admissions. In the succeeding two-month period, Buyers continued to learn from petitioner more and more information about his criminal activities (past and contemplated), including the identity of his associates, and was reporting what he learned to the F.B.I. as he learned it.[35] *Supra*, pp. 4–5.

While petitioner's admissions to Buyers undoubtedly constituted sufficient grounds on which to base a federal warrant for his arrest for the two bank robberies, the F.B.I.—presumably in order to make as thorough an investigation as possible of the robberies (and in particular to learn the identities of petitioner's confederates) before tipping its hand by a premature arrest—had, so far as appears, taken no steps towards the obtaining of a warrant or the making of an arrest as of early January. The Redlinski robbery of January 4 (which the F.B.I. learned—

[35] The F.B.I., as we have noted, was in "daily contact" with Buyers from November 5, 1956, to January 10, 1957, the day of the arrests (R. 142).

presumably from Buyers—was committed by petitioner and his associates, D'Antuono and Simmons) and the planned perpetration by the same three men of another robbery on the morning of January 10 compelled the F.B.I. to communicate what it knew about these crimes (the projected as well as the consummated) to the local police. The arrest of the three men obviously put an end to the possibility of acquiring from petitioner, through Buyers, any further information about the two bank robberies. The state arrest also made it impracticable for the F.B.I. itself to arrest petitioner on the federal charges; he was already arrested and in custody. In these circumstances, the F.B.I. naturally desired to interview petitioner and his associates as soon as possible. It was with this in mind that agent Roche went to the Buffalo police headquarters upon learning from Detective Golombeck that the men had been arrested. But there is certainly nothing in any of this to indicate that any interview which the F.B.I. might succeed in arranging with the arrested men would be on any basis other than by leave of, and at the convenience of, the local police, whose prisoners they now were. Everything that had happened up to this time, and that was to happen during the rest of that day and on the following day (see *infra*, pp. 59–67) fully supports that conclusion and refutes the dissenting view that the local police, in arresting and holding the men, were acting on behalf of and at the request or suggestion of the F.B.I.

4. *The lunch of the federal and state officers.*—Agent Roche was informed at police headquarters

that petitioner and his companions had not yet been questioned, following which Roche, Golombeck (chief detective), Klenk (police officer), and Dwyer (state district attorney), went to lunch together. The dissenting judges "suggest" that the arresting officers "were instructed not to commence questioning Coppola" until "after the FBI's desires could be ascertained", and "suggest further" that "the course of the afternoon's interrogation was determined at the meeting of [these four officers] at lunch, and that Roche had an important part in decisions there reached" (R. 306). This is sheer conjecture, with no support in the record.[36]

There was certainly nothing unusual about these four officers, at least three of whom (Roche, Golombeck, and Dwyer) were personal acquaintances from past associations, having lunch together.

The record is silent as to what they discussed at lunch. While it is natural to assume that they discussed the case, including the arrests and the plans of the state and local officers to interrogate the prisoners, it would seem far more likely (in the light of such evidence as there is) that, if interviewing of the prisoners by the F.B.I. was discussed at all, the discussion was in terms of the federal interviews' being conducted at the convenience of the local offi-

[36] There had, in fact, already been some questioning of the arrested individuals—as to what they were "going to do" and what they had in their automobile—at the time of the arrests (R. 84). Probably the police officers, in informing Roche upon his arrival at headquarters that the men "hadn't been questioned up to that moment" (R. 114), meant that they had not been questioned about past offenses.

cers and with their permission, than that the F.B.I., through agent Roche, "had an important part" at the luncheon in "determin[ing]" the "course of the afternoon's interrogation"—as the dissenting judges have surmised. Indeed, anything in the nature of a controlling hand in the proceedings on the part of the F.B.I. is wholly out of keeping with the facts of record.

On the other hand, there was nothing improper about an F.B.I. agent's asking local officials for permission to interview persons in their custody. It is not uncommon for officers of one investigative group to seek an interview with a person detained by another law enforcement agency, and such interviews are frequently permitted in the normal course of mutual cooperation and courtesy in the unraveling of the threads of crime. There is nothing illegal or inappropriate in such a practice. For further discussion, see *infra*, pp. 72–74, 83.

5. *Extensive questioning of petitioner by state and local officers, alone, for their own purposes.*—The record of actual events at headquarters that afternoon and evening and on the following day shows, we believe, that the state alone had custody of petitioner and his associates, for state and local purposes, related to state and local crimes; and that the limited and subordinate role played by the F.B.I. in the proceedings was at the sufferance and permission of the state and city authorities and subject to their convenience.

Commencing at about 2:30 p.m., petitioner was extensively questioned by state and local officers con-

cerning what part, if any, he had in various state crimes. In addition, he participated in at least two lineups, or showups, which were conducted by the Buffalo police for purposes of their own, without any participation by any federal officer. Among the interrogating state and local officials were officers of the police department, members of the Bureau of Criminal Investigation of the New York State Police, and representatives of the county District Attorney's office, including Mr. Dwyer, the District Attorney. The crimes concerning which these officers questioned petitioner included, and appear to have consisted principally of, offenses within exclusive state or local jurisdiction, *i.e.*, crimes to which the F.B.I.'s jurisdiction did not extend and with which, consequently, it had no official concern. *Supra*, pp. 19–20. Thus, it appears that the state and city officers interrogated petitioner concerning the Redlinski robbery, the Sidell burglary, the robbery of an unidentified individual in Niagara Falls, and possibly other purely local offenses (*supra*, p. 19). At 3:45 and 4:15 p.m., respectively, petitioner was "booked" for the Redlinski and Sidell crimes (*supra*, p. 22), the offenses for which he was locally arraigned the following day (*supra*, p. 28). In addition to interrogating petitioner concerning these purely local crimes, Lieutenant Klenk of the city police, and possibly Mr. Dwyer, the District Attorney (the evidence is less clear as to him), questioned petitioner concerning the two crimes—the M. & T. and Liberty Bank robberies—involved in these cases (see *supra*, pp. 19, 20–22, including fn. 21). The latter fact, how-

ever, does not indicate that either of the local officers was thereby serving the interests of the F.B.I. For those robberies were state as well as federal offenses, and the state and local officers had, consequently, fully as legitimate an official interest in those crimes as in the crimes over which their jurisdiction was exclusive.

In short, here, unlike the situation in the *Anderson* case, it appears that the state and local officers were themselves pursuing their own interests; that those interests were, in the main, unrelated to any federal interest; and that, insofar as there was an overlapping of interest (as in the case of the M. & T. and Liberty Bank robberies), the state and local officers pursued their interest independently of the federal officers.

6. *Short joint questioning of petitioner by a state and a federal officer.*—The fact that at one point in the afternoon's proceedings F.B.I. agent Roche and District Attorney Dwyer questioned petitioner in a joint interview is not inconsistent with these conclusions. According to petitioner, Dwyer questioned him "in front of Mr. Roche" "on the M. & T. Bank" matter. He further testified that "they" "pointed out their information on other robberies" and told him that "by cooperating on the M. & T. Bank [he] would get a break on everything." However, in response to the question, "Who said that?", he replied that he did not remember which of the two officers said it because "Both men were talking at the same time." *Supra*, pp. 21–22. According to Roche's version of this interview, on the other hand, Dwyer, in Roche's presence,

told petitioner he was interested in him in connection with "a series of various crimes", and proceeded to question him about the Redlinski holdup. After the conversation between Dwyer and petitioner had gone on for some time, Roche said, he interrupted them to ask petitioner about the M. & T. robbery. This was followed by Roche's attempt (which ultimately proved unsuccessful) to obtain from petitioner written authorization to search his home, in connection with which Roche left Dwyer and petitioner to telephone his office. *Supra*, pp. 20–21. It does not appear from Roche's testimony that there was any further discussion between him and petitioner about either bank robbery, in the presence of Dwyer or otherwise.

Whichever version of this joint interview [illegible] rect,[37] there is nothing in it at war with our contention that the federal and local officers acted substantially independently in interviewing and interrogating petitioner, as each group went about its own business and pursued its own interests. Assuming *arguendo* the correctness of petitioner's account, the most that it establishes is that a state officer and a federal agent, during a relatively brief period in the day's proceedings, jointly questioned petitioner about a crime in which they had a common jurisdictional interest. This isolated incident would be far from sufficient to warrant the equating of the proceedings in

[37] The testimony relating to the interview was given only at the M. & T. hearing. There is no indication as to which account of it (to the extent there may be thought to be a conflict in the testimony) the trial judge credited.

this case, as a whole, to the sort of protracted joint endeavor, extending for almost a week, that was involved in the *Anderson* case, or to require or warrant the application of the rationale of the *Anderson* opinion to the wholly different circumstances shown here.

7. *Questioning of petitioner by the F.B.I. agents alone, and petitioner's confessions.*—That evening, beginning shortly after nine o'clock, petitioner made the confessions in issue to agents Eddy and Jenson of the F.B.I. (*supra,* pp. 22–26). As noted by the majority below (R. 289), the agents' interrogation of petitioner did not contribute to any delay in his arraignment by the local officers on the state charges. This is because, as both counsel agreed upon oral argument, petitioner "could not have been arraigned after 5:00 P.M. on January 10, 1957 in the Buffalo City Court", and the next time he could have been arraigned was the following morning (*ibid.*). The events of that evening, moreover, further demonstrate the local character of the prisoners' custody and the fact that the federal officers' interrogation of the prisoners, far from constituting the objective of their arrest and detention, was incidental to the purposes of the local officers, conducted only by their leave and subject to their convenience. The evidence established that the interviewing federal agents had to wait approximately an hour following their arrival at headquarters in the evening before they could commence their interview, since petitioner was then participating in a lineup (the third of the day) for the

local police (*supra*, pp. 22-23).[*] The federal interview was conducted only with the permission of the local police, which agent Eddy testified he obtained from Chief Golombeck prior to its commencement (*supra*, pp. 22–23). The interview was interruped by District Attorney Dwyer, who, while the agents waited, questioned petitioner about a matter which had nothing to do with the subjects the agents were discussing and to which the agents paid little or no attention (*supra*, p. 25).

It is true that Klenk, the police lieutenant, went to the cell block on two occasions during the federal agents' interview with petitioner (and the interviews of other agents with the other two prisoners, which were simultaneously going on) for the purpose of interrogating the prisoners about matters the city police were interested in and on a third occasion went to procure them for purposes of another lineup, and that in each instance he desisted on seeing that the agents' interviews were still in progress. The evidence is clear, however, that the city officer refrained on each occasion solely as a matter of courtesy to the federal officers. Klenk could, if he had chosen, as he testified, have taken the prisoners away from the agents since they were "our prisoners". But in deference to the fact that the agents were "visiting headquarters", Klenk "showed them the courtesy of letting them talk with" the prisoners. *Supra*, pp. 25–26.

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[*] We have previously noted (*supra*, p. 62) that these lineups were carried on by the police independently of the federal officers and pursuant to their own interests.

8. *Delay in federal arraignment due to local officers' insistence on prior state arraignment.*—Finally, there is the significant fact that the local authorities refused on the following day to surrender petitioner to the federal authorities before they had arraigned him on state charges (*supra*, pp. 26–28). This shows that the state and local officers considered petitioner to be their prisoner at all times, and that they refused to subordinate their interests to those of the federal authorities until it suited their own operations.

9. *Prior investigative collaboration of federal and state officials.*—The fact that, as petitioner stresses (Br. 16–18), prior to petitioner's apprehension the F.B.I. and the Buffalo police collaborated closely with each other in attempting to solve the M. & T. Bank robbery[20] (*supra*, pp. 14–15) does not indicate that there was a "working arrangement" (in the sense of the *Anderson* opinion) between the police and the F.B.I. in *arresting and detaining petitioner and interrogating him* concerning his part in that crime. Such "[f]ree and open cooperation between state and federal law enforcement officers is to be commended and encouraged", as this Court observed in *Elkins* v. *United States*, 364 U.S. 206, 221, and can scarcely be the basis for an inference of illicit collaboration between such officers in depriving a prisoner of his rights. As observed by the court below, "'If this cooperation [between the F.B.I. and the police in attempting to solve the M. & T. case] reached the point of arrest and detention by [the] local police for the purpose

[20] There was presumably, as we have noted, similar collaboration with respect to the Liberty Bank robbery, but there is no evidence on the point.

of enabling [the] federal officers to question the defendants concerning the bank robberies for a period of time forbidden to federal officers by Rule 5(a) of the Federal Rules of Criminal Procedure, admissions thus obtained would be properly excluded. Such a rule prevents federal officers from evading the letter and the spirit of Rule 5(a). The rule excludes confessions when the 'working arrangement' includes the illegal detention—in other words, when federal law enforcement officers induce state officers to hold the defendant illegally so that they may secure a confession. However, to bring a case within this rule there must be facts, as there were in *Anderson*, not mere suspicion or conjecture" (R. 290–291). Without such facts, absent here, it is impermissible to jump from appropriate collaboration in investigation to unlawful collaboration in illegal detention and questioning.

The record shows, in sum, cooperation and mutual courtesy between the federal and local authorities as each group went about its own business; it does not show a "working arrangement" resulting in a "collaborati[ve]" deprivation of prisoners' rights in the sense condemned in *Anderson* v. *United States*. Cf. *White* v. *United States*, 200 F. 2d 509, 511–513 (C.A. 5), certiorari denied, 345 U.S. 999; *Brown* v. *United States*, 228 F. 2d 286, 289 (C.A. 5), certiorari denied, 351 U.S. 986; *Horne* v. *United States*, 246 F. 2d 83 (C.A. 5), certiorari denied, 355 U.S. 878; *Papworth* v. *United States*, 256 F. 2d 125, 127–129 (C.A. 5), certiorari denied, 358 U.S. 854; *Carpenter* v. *United States*, 264 F. 2d 565, 571 (C.A. 4); *Tillman* v. *United States*, 268 F. 2d 422, 425 (C.A. 5); in each of these cases admissions to federal officers while the defendant

was held in state custody were held to have been properly admitted. "In the absence of any evidence of collaboration to achieve an unlawful end", there is no basis, as the court below ruled (R. 291), for excluding "uncoerced confessions made during a detention by state officers which the Federal officials did not induce and were powerless to prevent."

The common issue in both these cases (*i.e.*, the M. & F. and Liberty Bank cases) was one of fact, which the trial judges in the two cases, independently, and on the basis of a full development of the relevant evidence, resolved against petitioner (*supra*, pp. 28–30). Under settled principles, those findings must be accepted unless clearly erroneous. They were accepted, after full review, by the court of appeals. We have set forth our reasons for believing the findings to be fully supported by the evidence. The majority below were right, we submit, in concluding that "there is in this record no basis for the conclusion that the apprehension and continued detention of Coppola and his companions was at the behest of federal officers or for the purpose of aiding any investigation they wished to conduct" (R. 290). The dissenting judges' contrary conclusions were, as we have shown, based in large part on surmise and conjecture. Even to the extent that their views were based on the evidence and on inferences they felt compelled to draw, they had only the cold words of the record to appraise; they lacked the advantage, which the trial judges had, of seeing and hearing the witnesses. The concurrent findings of the two trial judges, confirmed by the court of appeals, must be sustained. Cf. *Abel* v. *United States*, 362 U.S. 217, 227–228, 240.

II

THE FACT THAT AT THE TIME WHEN PETITIONER VOLUNTARILY CONFESSED HE WAS BEING DETAINED BY LOCAL OFFICERS IN VIOLATION OF LOCAL LAW DID NOT IN ITSELF MAKE HIS CONFESSIONS OF FEDERAL OFFENSES TO FEDERAL OFFICERS INADMISSIBLE AT HIS TRIALS FOR THOSE FEDERAL OFFENSES

Petitioner also argues that the bare fact that when he confessed he was being detained by the city police in violation of New York arraignment law sufficed, without more, to render his confessions inadmissible at his federal trials (Br. 26–33). On this point, the argument is that it is immaterial whether his illegal detention was the result of connivance or collaboration between the federal and local officers, or of a "working agreement" between them of the sort involved in the *Anderson* case; the fact that when he confessed he was in illegal police custody is said to be enough in itself to require the exclusion of his confessions in a federal prosecution.

The same argument was made by the dissent below as an alternative basis for its rejection of the court's holding that the challenged confessions were properly received (R. 301–302). Pointing out that the *Anderson* decision, 318 U.S. 350, was "based upon" *McNabb* v. *United States*, 318 U.S. 332, and its determination "governed by the same considerations," the dissent stated (R. 302):

> In *McNabb* it was held that a confession secured in a two-day interval between arrest and arraignment could not be admitted in a federal criminal proceeding. The requirement of prompt arraignment is intended to protect a

> prisoner from intensive interrogation prior to the time a magistrate can determine whether there is any probable cause for detention and can inform the prisoner of his right to counsel and his right to remain silent. *Mallory* v. *United States*, 354 U.S. 449, 453–54 (1957). A federal defendant has been equally deprived of this protection whether his confession, exacted during detention prior to an arraignment, is made to a federal agent in a city, state or federal jail, or in a Tennessee Y.M.C.A.

The argument, we submit, is untenable.

A. In the first place, to adopt this rule would read out of the *Anderson* decision the very "working arrangement"—the "collaboration with state officers" by which the federal officers "secured improperly" the confessions there involved—upon which that decision turned. 318 U.S. at 356. It would have been wholly unnecessary for the Court to cite these factors if the bare fact that the defendants were being detained by the state officers in violation of state law at the time they made their confessions to the federal officers sufficed without more to require the exclusion of the confessions.

B. The argument also mistakes the holding and rationale of *McNabb* v. *United States*, 318 U.S. 332. The *McNabb* case established an exclusionary rule of evidence for federal criminal trials, the underlying purpose of which was to deter *federal law enforcement officers* from violating the federal prompt-arraignment statutes, now embodied in Rule 5(a) of the Federal Rules of Criminal Procedure. 318 U.S. at 340–347. It was the "use by the Govern-

ment of the fruits of wrongdoing by its officers" which the rule of that case was calculated to prevent. *United States* v. *Mitchell,* 322 U.S. 65, 70; *Upshaw* v. *United States,* 335 U.S. 410, 413.

Since it was wrongdoing by the government's own officers in violating Rule 5(a) that the *McNabb* rule was designed to discourage, it makes no difference (for the issue of admissibility in a federal court) whether, in the case of a confession of a federal offense made while in non-federal custody, the detaining officers have or have not complied with *local* law in effecting or maintaining the custody—*provided* that no federal officer is a party to any wrongdoing. In the *Anderson* case the confessions were inadmissible because federal officers were parties to the wrongdoing. In administering the so-called *McNabb* rule, the concern of the federal courts has been with the conduct of *federal* law enforcement officers with relation to the pertinent federal Rules on arrest and arraignment. Similarly, in another aspect of this Court's supervisory authority, the concern with unlawful searches and seizures reflected in *Rea* v. *United States,* 350 U.S. 214, and *Wilson* v. *Schnettler,* No. 182, decided February 27, 1961, has been directed at the activities of *federal* officers who alone are controlled by the federal Rules on obtaining evidence by search.

The fact is that the only officers the federal courts can effectively control are federal officers. If the unlawful detention is not initiated or furthered by federal agents, a rule excluding admissions or confessions given during such a period would not tend to further the ends sought by the prompt arraignment require-

ment of Rule 5(a) of the Federal Rules of Criminal Procedure—on which the *McNabb-Mallory* principle rests. State officers enforcing state law who detain a prisoner unlawfully would not be deterred from future violations merely because the confession of a federal crime which happened to be made during the detention would be excluded in the federal court. Rather, the effect of such a ruling would be to impede the federal prosecution without significantly furthering the policy of discouraging detentions by state officers which are illegal under state law.[40] To an important extent, such a rule would also give persons over whom the federal executive and the federal courts have no control the power to affect federal prosecutions through the timing of the state arraignment. State officers ought not to be given power so to interfere with federal prosecutions (cf. *Abbate* v. *United States*, 359 U.S. 187, 195), free of all control by the federal government.

Moreover, the mere fact that the confessions were made to federal officers—rather than to state officers or third parties—should not be held to be a sufficient federal "involvement". It is proper law enforcement practice for federal agents to interview potential defendants or witnesses who happen to be in the custody of another sovereignty—if the officials of the other sovereignty permit. This is a recognized method of investigation and law enforcement.[41] Certainly, these

[40] The *McNabb-Mallory* principle is not embodied in the Due Process Clause of the Fourteenth Amendment. See *infra*, p. 78.

[41] The F.B.I. agents testified at the hearings in both cases that they told petitioner that he did not have to talk or make

voluntary confessions to federal agents would have been admissible (at the federal trials) if made after the local arraignment. To hold them inadmissible because the interview took place during a period of unlawful detention by state officers would be either to charge the federal agents with an illegality in which they had no part or ineffectually to seek to enforce, via these agents, state rules on prompt arraignment with which federal courts and federal agents are not concerned (and are often not informed). And to hold such voluntary confessions admissible if made to state officials or private persons, but inadmissible if given to a federal agent, would seem quixotic, penalizing proper federal law enforcement without reason.

C. The argument that the federal courts somehow condone or ratify illegality when they admit a voluntary confession given during a period of illegal detention by state officers is likewise not well founded. The fundamental reason for a trial is the discovery of the truth. The rule of exclusion, however, does not bring out the truth; in its immediate impact on a particular case it suppresses truth. Hence, where the rule of exclusion is applied, it is not so much because to admit the evidence implies ratification or condonation, but because federal exclusion effectively serves to

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a statement, and that he had a right to an attorney, but that any statement he did make might be used against him. Petitioner denied this at the hearings, but in one of the two cases agent Eddy repeated this testimony before the jury, and it was not contradicted. See the Statement, *supra*, p. 23, and fns. 8 and 25, *supra*, pp. 7–8, 24–25.

keep federal law enforcement within proper bounds. The federal courts do not undertake to make certain that every bit of evidence that comes before them has been obtained with due observance of all the amenities by every person who might have relevant evidence. This was recognized by the Court in *Burdeau* v. *McDowell*, 256 U.S. 465. There, the petitioner's employer, after discharging him, stole documents from the petitioner's desk and safe and, after using them, turned them over to the government because they tended to show the commission of a federal offense. This Court held that the government need not surrender the documents to the petitioner, stating (*id.* at 476):

> The papers having come into the possession of the Government without a violation of petitioner's rights by governmental authority, we see no reason why the fact that individuals, unconnected with the Government, may have wrongfully taken them, should prevent them from being held for use in prosecuting an offense where the documents are of an incriminatory character.

See, also, *McGuire* v. *United States*, 273 U.S. 95, 99: "The use by prosecuting officers of evidence illegally acquired by others does not necessarily violate the Constitution nor affect its admissibility."

Just as admission of the evidence in *Burdeau* did not mean exoneration or approbation of the employer's illegal acts, admission of the confessions in the present situation does not exonerate the state officers or imply approbation of their action in hold-

ing the petitioner too long before arraigning him on the local charges. Admission of evidence in a case involving illegal action by state officers merely means that the public interest in prosecution outweighs the benefit derived from application of an ineffective sanction. And just as the federal government need not take into account, or justify, the manner in which a private individual obtained evidence bearing on a crime, it ought not to have the burden of undertaking to justify the state detention during which the confession was made. See also *infra*, pp. 79 *ff*. The most that the federal courts can do is to make certain that federal officers conduct law enforcement activities within the limitations prescribed by the Constitution and by Congress. And arguments of ratification or condonation are relevant to that inquiry, if at all, only when federal officers are actually involved in the illegal activity. See also *Feldman* v. *United States*, 322 U.S. 487, 492.[42] The rule of exclusion has been applied only where a *federal* right has been violated, *i.e.*, where there has been a violation of the federal Constitution, a federal statute, or a federal Rule.

D. *Elkins* v. *United States*, 364 U.S. 206, upon which petitioner relies (Br. 28–33), is not opposed to these conclusions. That case held that "evidence obtained by state officers during a search which, if

[42] Mr. Justice Brandeis' famed dissent in *Olmstead* v. *United States*, 277 U.S. 438, rests in large measure on the proposition that the illegal action was taken by federal officers. *Id.* at 482. He stated, "The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress." *Id.* at 484. But see *Burdeau* v. *McDowell*, 256 U.S. 465, 476–477 (Justices Brandeis and Holmes dissenting).

conducted by federal officers, would have violated the defendant's immunity from unreasonable searches and seizures under the Fourth Amendment is inadmissible over the defendant's timely objection in a federal criminal trial" (364 U.S. at 223). The decision overruled the so-called "silver platter" doctrine—that evidence so obtained was admissible in a federal court if its seizure had been "without involvement of federal officers" (p. 208).

The crux of the *Elkins* decision was that the victim of such a search and seizure, notwithstanding the nonparticipation by any federal officer and the absence of any federal responsibility for it, had nevertheless been deprived of a *federal* right of *constitutional* stature, *i.e.*, the right under the Fourteenth Amendment (as construed in *Wolf* v. *Colorado*, 338 U.S. 25) to be free from unreasonable searches and seizures by state officers. See, *e.g.*, 364 U.S. at 213, 214, 215, 221, 222, 223. Thus, the Court, after pointing out that the "underlying constitutional doctrine" of the *Wolf* decision was that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers," observed that that decision had removed the "doctrinal underpinning" of the silver platter rule. 364 U.S. at 213. Similarly, the Court observed—in discussing the "imperative of judicial integrity," the additional consideration on which the decision was based—that federal courts, if they were to receive such state-seized evidence, would become "accomplices in the willful disobedience of a Constitution they are sworn to uphold." *Id.*, pp. 222–223. And recently in *Monroe* v. *Pape*, No. 39, decided February 20, 1961, the Court declared (citing the *Wolf* and

Elkins decisions) that "the guarantee against unreasonable searches and seizures contained in the Fourth Amendment has been made applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment" (slip op., p. 4).

It is apparent from these grounds of decision that the *Elkins* case is distinguishable from the present one in two decisive respects. First, we deal here with a claim which, unlike that involved in the *Elkins* opinion, has no constitutional aspect. The Constitution does not extend the *McNabb* rule to the states.[43] Apart from the claimed collaborative involvement of federal officers (which our present discussion pretermits), the petitioner's claim has no federal aspect at all. That claim is that the arraignment of petitioner by state officials in a state court for state offenses was not as prompt as required by a locally applicable state statute. Neither of the two trial judges found any basis for concluding that petitioner's confessions were coerced, or *constitutionally* invalid. See *supra*, pp. 7–8, 24–25, fns. 8 and 25. No such constitutional claim, moreover, was even advanced in the court of appeals, and none is made here. The absence from this case of any claim of violation of a federal constitutional right thus makes inapplicable the rule

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[43] See *Crooker* v. *California*, 357 U.S. 433, 439; *Cicenia* v. *Lagay*, 357 U.S. 504, 509; *Fikes* v. *Alabama*, 352 U.S. 191, 199 (concurring opinion); *Rea* v. *United States*, 350 U.S. 214, 216–217; *Burns* v. *Wilson*, 346 U.S. 137, 145 (opinion of Vinson, C.J.); *Stein* v. *New York*, 346 U.S. 156, 187–188; *Brown* v. *Allen*, 344 U.S. 443, 476; *Stroble* v. *California*, 343 U.S. 181, 197; *Gallegos* v. *Nebraska*, 342 U.S. 55, 63–65 (opinion of Reed, J.); *Lyons* v. *Oklahoma*, 322 U.S. 596, 597–598, n. 2; *Lisenba* v. *California*, 314 U.S. 219.

and rationale of *Elkins* v. *United States*, where the fac that a right of that stature had been violated was the controlling consideration. In this cardinal respect the instant case is comparable, not to *Elkins*, but to *Weeks* v. *United States*, 232 U.S. 383, 398, and *Byars* v. *United States*, 273 U.S. 28, laying down the former rule that evidence unreasonably seized by state officers (without federal participation) was admissible in a federal trial because, prior to the *Wolf* case, such a search-and-seizure was thought not to violate the federal Constitution. 364. U.S. at 210–213.

Secondly, the evidence involved in the *Elkins* case was seized by the state officers—*the officers who allegedly violated the law.* Here, the challenged evidence—the federal confessions—was obtained, not by the state officers, whose detention of petitioner without prompt arraignment constituted the illegal act, but by the federal officers, who (it is assumed in this Point) were innocent of any wrongdoing. There are some considerations of propriety arguing against the admission of evidence the very act of procuring which violated rights of the accused. But such considerations have no place in a case such as this, where the officers who secured the contested evidence were innocent of wrongdoing, and the only taint which can arguably be said to infect it lies in the culpable acts of others.

E. Finally, the rule urged by petitioner would make the admissibility, in a federal court, of a voluntary confession of a federal offense, made to a federal officer, depend, if given while in the custody of state officers, upon the widely variant arraignment laws of the several states. A provision frequently

found in the state statutes requires (like federal Rule 5(a) and the New York statute) that the person arrested be arraigned before a magistrate "without unnecessary delay."[44] The question would arise as to what is meant by "unnecessary delay" in that jurisdiction; it would be imperative to consult local decisions to determine whether the type of delay evidenced by the record was necessary or unnecessary within the statute. The statutory provisions themselves, moreover, vary widely from state to state, and would inevitably pose difficult questions of interpretation. For example, under the rule proposed by petitioner and the minority below, a confession of a federal crime to a federal officer while in local custody where arraignment had been delayed might, depending upon the length of the delay, be inadmissible if made in a state which, like California, imposes a specific maximum time limit within which arraignment must be had,[45] but admissible if made in a state

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[44] E.g., Ariz. Stats. 1956, §§ 13–1417, 13–1418, 13–1419; Fla. Stats. 1941, §§ 901.06, 901.23; Ida. Code 1947, §§ 19–515, 19–614, 19–615; Ill. Smith-Hurd Ann. Stats., c. 38, § 660; Iowa Code 1946, §§ 755.14, 758.1; La. Rev. Stats. 1950, § 15:79; Mich. Stats. Ann., §§ 28.872, 28.873, 28.885; Miss. Code 1942, § 2473; Mont. Rev. Codes 1947, § 94–5912; Nev. Rev. Stats., §§ 171.290, 171.300; N.D. Century Code, §§ 29–06–23, 29–06–25; Ohio Rev. Code 1953, §§ 2935.05, 2935.06; Okla. Stats. Ann., Tit. 22, § 181; S.D. Code 1939, §§ 34.1608, 34.1619; Utah Ann. Code 1953, §§ 77–13–15, 77–13–17.

[45] California requires arraignment "without unnecessary delay, and, in any event, within two days after [the person's] arrest, excluding Sundays and holidays". Penal Code, § 825. Cf. Del. Code 1953, Tit. 11, § 1911; N.H. Rev. Stats. 1955, § 594:23; R.I. Gen. Laws 1956, § 12–7–13.

where no specific limit is prescribed. Missouri, by implication at least, authorizes the detention of persons arrested without warrant for up to twenty hours without arraignment,[46] and New Hampshire makes the duration of lawful detention without arraignment depend, at least in part, upon the time of day when the arrest is made.[47] The admissibility of the federal confession to a federal officer, while in the custody of one of these states, would depend, under the rule urged by petitioner, upon these and similar peculiarities in the local law of arraignment. If the confession were made in a state which, like Arkansas,[48] requires the "forthwith" arraignment of arrested persons, there would be the problem of whether a slight delay by the arresting officers, and one which by federal standards was reasonable, would require the rejection of the confession by the federal court.

Moreover, if, as would frequently happen (compare this case [49]), the legality of the initial detention

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[46] Rev. Stats. 1949, § 544.170. The section requires that persons arrested without warrant be discharged within twenty hours unless within that time they are charged with crime by the oath of a credible person.

[47] Rev. Stats. 1955, §§ 594:19, 594:20. Section 594:19 requires that arraignment, in general, be effected "without unreasonable delay." Section 594:20 provides that, if the arrest be between sunset and sunrise, arraignment may be deferred for "not exceeding twenty-four hours."

[48] Stats. 1947, § 43-601. See, also N.J. Stats. Ann. (Perm. Ed.), § 2A:18-10; Vt. Stats. 1958, Tit. 13, § 5507; cf. Tex. Code Crim. Proc., Art. 217 ("immediately").

[49] See fn. 30, *supra*, p. 44.

itself were challenged, the federal court might well be required to inquire into the difficult area of the law of arrest as developed in the statutory and decisional law of the particular state—though the federal officers (to whom the confession was made) had, by present hypothesis, nothing whatever to do with the prisoner's apprehension. If the arrest were pursuant to warrant, typical questions would be whether the warrant was properly issued, on proper grounds, by an authorized official, and whether it was properly executed by a qualified officer. If there were no warrant, decision would be required as to whether the locally applicable conditions of a valid arrest without warrant were met.[50]

The suggested rule would make what is essentially a federal question—and one in respect of which uniformity of decision throughout the country is

[50] By statute in some states (to cite but one instance of the significant variance of the law of arrest from state to state) a peace officer may stop any person abroad who he has reasonable ground to suspect is committing, has committed, or is about to commit a crime, and demand of him his name, address, and business abroad; if the person fails to identify himself or explain his actions to the satisfaction of the officer, the officer may further detain, question, and investigate him for a period not to exceed two hours (four hours in New Hampshire) without the necessity of charging him with any crime; at the end of this period of detention the detained individual must either be released or "be arrested" and charged with a crime; such detention (the statutes further provide) is not to be deemed an arrest, or to be recorded as such in any official record. See Del. Code 1953, Tit. 11, § 1902; N.H. Rev. Stats. 1955, § 594:2; R.I. Gen. Laws 1956, § 12-7-1. The provisions are part of the proposed Uniform Arrest Act (section 2), reprinted in Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 343-347 (1942).

much to be desired—depend upon the status of the law of arrest and arraignment in the particular state where the accused happened to be in custody. The decision in each case would require examination into a complex area of local law, decisional and statutory, by a court having neither familiarity with, nor special competence in, the details of that law and the local precedents. A federal officer, who learns that a person whom he wishes to question in connection with an investigation in which he is engaged is in the custody of state or local officers, should not be required to determine at his peril whether the custody of the person was legally effected and is being legally maintained. To make inquiry into such matters—to check, in effect, on whether the local officials know their business and have lawfully carried it out—might well be considered presumptuous and offensive. In any event, to require the federal agent to determine whether the detention is unlawful would impose upon him, initially, the task of assessing the various state statutory and judicial rules on arrest and arraignment—at the risk of having a statement declared inadmissible at the federal trial.[51]

[51] In this case, it should be noted, there is no question of the admissibility of a confession made by a defendant in illegal custody to a federal officer who affirmatively *knows* the prisoner's detention to be illegal under local law, and takes advantage of that fact. There was no evidence that any federal agent or officer knew that petitioner's detention was illegal at the time of the confessions, nor that any federal agent or officer attempted to make use of the unlawful detention for federal purposes. See *supra*, pp. 51-69.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgments of the court of appeals should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 153.—October Term, 1960.

Frank R. Coppola, Petitioner, v. United States.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 17, 1961.]

Per Curiam.

We brought this case here, 364 U. S. 813, believing that it presented a question under *Anderson* v. *United States*, 318 U. S. 350. After hearing oral argument and fully examining the transcript of the proceedings in the trial court, we conclude that the particular facts of the case are not ruled by *Anderson*. We find no merit in the other argument advanced by the petitioner.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 153.—October Term, 1960.

Frank R. Coppola, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 17, 1961.]

Mr. Justice Douglas, dissenting.

Petitioner has been convicted of participating in two different bank robberies in violation of 18 U. S. C. § 2113. In each case petitioner's confessions obtained by agents of the F. B. I. were admitted against him. These confessions were made during an interrogation taking place in the Buffalo police headquarters while petitioner was under detention by local police.

Petitioner was no stranger to the F. B. I. One of the bank robberies charged against petitioner occurred in February 1956, the other in October of that year. The F. B. I. had first come into contact with petitioner when, at their request, he re-enacted the events of the first robbery before an audience of its victims. Apparently nothing came of this investigation. Then—almost a year later—the F. B. I. came into possession of information that petitioner was involved in an unrelated state crime. This information was relayed to the Buffalo police and put into motion the events which led to petitioner's detention, his interrogation, and his being charged with these federal crimes. He was arrested by the local police on a charge of violation of the state law at about 9:30 in the morning. The Buffalo police, who had arrested him, had interrogated him during the day. But they made no

attempt to have a prompt commitment hearing that was required by New York law.[1]

The F. B. I. had been informed of petitioner's arrest about noon of the day of his arrest. At nine in the evening of that day they received permission to interrogate petitioner as to his involvement in the two robberies. From nine in the evening until almost one o'clock in the morning of the next day, they carried on their interrogation, while state officials left them alone with petitioner "as a matter of courtesy." It was during this period that petitioner confessed to participation in both crimes. The next day, the federal officers officially "requested custody" of petitioner, so that he could be arraigned on the federal charges. There was some delay before he was given into federal "custody," for the local police had to see to his commitment under the state charges. Shortly after two o'clock in the afternoon he was arraigned on the state charges in the Buffalo City Court. At four in the afternoon, about 19 hours after the federal agents had commenced their interrogation, petitioner was arraigned in the federal court. There has been much attention focused, in the progress of this case, on whether the Buffalo police and the F. B. I. had a "working arrangement" (see *Anderson* v. *United States*, 318 U. S. 350, 356) by which petitioner's detention was effected. In my view, the activity of the federal agents in this case is proscribed without regard to whether there was, or was not, a pre-existing "working arrangement."

The confessions would be inadmissible in the case now before us if the original arrest in this case had been made by federal officers. For the duty of a federal officer making an arrest is to take the arrested person "without

[1] N. Y. Code Crim. Proc. § 165. See *People* v. *Lovello*, 1 N. Y. 2d 436, 438, on whose authority the Government concedes the illegality of the detention under state law.

unnecessary delay" before a judicial officer for a hearing in compliance with Rule 5 (a), Fed. Rules Crim. Proc. Here the petitioner was detained for 20 hours without seeing a judicial officer of any sort; and for 19 of these hours he was under the visitation of federal officers. There was no effort to arraign the accused during that time. The federal officers took no steps to do it themselves; nor did they insist that the state police make the arraignment before a state judge as required by state law. There was also no showing that magistrates were unavailable.[1] I think it plain therefore that the 19-hour detention was an "unnecessary delay" within the meaning of Rule 5 (a).

Arrest, and the resulting detention, serves, under the Federal Rules, the purpose of assuring that a person accused on probable grounds of a crime will be amenable to the orders of a competent court, which include by the terms of Rule 5 (b) the right to counsel and to bail. It is not an administrative step preliminary to a secret interrogation. In *Mallory v. United States*, 354 U. S. 449, 454, this Court said that an accused "is not to be taken to police headquarters in order to carry out a process of inquiry, ..." In that case the accused was arrested at 2:30 p. m. and his questioning began about 8 p. m. By 10 p. m. he confessed at which time the federal agents tried, without success, to reach a federal magistrate. Between 11:30 p. m. and midnight, petitioner dictated his confession to a typist; and he was not arraigned until the next morning.

The only reason put forward for a different result in this case is that the "police headquarters" in which fed-

[1] There is some suggestion that a state magistrate was not available after five o'clock in the afternoon. Cf. N. Y. Code Crim. Proc. § 165. But there is no suggestion that a federal magistrate was not available.

eral agents carried out the wrongful "process of inquiry" belonged to Buffalo police rather than the Federal Government. The Government contends here, as it did in *Anderson* v. *United States*, *supra*, 356, that it is not "formally guilty of illegal conduct." The device is too transparent. I do not think that federal agents can avoid the impact of federal rules by taking advantage of an illegal detention arranged by state officers. Rule 5 (a) is not a formality; its purpose is to minimize secret police interrogation of persons under detention; its ultimate aim is to avoid those situations out of which grow the whole system of the "third degree." The evil at which the rule aims is in interrogation in secret and in detention before the arraignment. Its means are arraignment "without unnecessary delay." Here, the federal agents carried on the kind of interrogation against which Rule 5 (a) is aimed. The fact that the interrogation took place in the cell of a state police station rather than in the cell of a federal jail or prison only accentuates the evasion of the Rule. In this case the federal agents used an illegal detention as the occasion to carry on a secret interrogation. What the federal agents cannot do in federal precincts they cannot do in a state jail. What we do today is to permit federal agents to flout the federal law so long as they let the accused stay in a state jail and interrogate him there to their hearts' content.